Circuit Court for Anne Arundel County
Case No. C-02-CV-20-000565

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 223

September Term, 2021

LEON HAUGHTON

v.

WILLIAM KATCEF, ET AL.

Kehoe,
Leahy,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: February 24, 2022

In the Circuit Court for Anne Arundel County, Leon Haughton, appellant, filed suit against William Katcef, appellee, an Assistant State's Attorney in Anne Arundel County, along with other parties who later were dismissed from the action, for malicious prosecution, false imprisonment, and conspiracy to violate his constitutional rights. The circuit court granted Mr. Katcef's motion to dismiss the third amended complaint, ruling that he was immune from civil liability. Mr. Haughton appeals, presenting two issues, which we have condensed and rephrased as one question:[1]

> Did the circuit court err by dismissing the third amended complaint on the basis that Mr. Katcef was absolutely immune for his actions under the doctrine of common law prosecutorial immunity or, in the alternative, statutorily immune under the Maryland Tort Claims Act?

For the following reasons, we answer that question in the negative and shall affirm the judgment of the circuit court.

I. BACKGROUND

We draw the following facts from the well-pled allegations of the third amended complaint. Mr. Haughton is a Jamaican national and a permanent resident of the United States, living in Prince George's County. On December 29, 2018, he was returning to

[1] The issues raised by Mr. Haughton are:

> I. Whether Katcef's actions of conspiring with federal agents to prevent Mr. Haughton from obtaining bail in order to further an investigation is an act closely associated with the prosecutor's role in the judicial process thus entitling Katcef to absolute prosecutorial immunity.
>
> II. If Katcef is not entitled to absolute immunity, then whether Plaintiff has sufficiently alleged facts providing a prima facie showing of malice necessary to overcome the affirmative defense of qualified immunity.

Maryland after an "extended vacation" in Jamaica and flew into Baltimore/Washington International Thurgood Marshall Airport. As he exited customs, Mr. Haughton was detained by agents from the United States Customs and Border Protection agency, who asked to search his baggage. The search yielded three plastic containers labeled "Honey." The federal agents used a "$5 presumptive drug field test" to test the substance, which returned a positive result for the presence of methamphetamines. Based upon this test result, officers from the Maryland Transportation Authority ("MDTA") placed Mr. Haughton under arrest.

Mr. Haughton was charged in the District Court of Maryland for Anne Arundel County with felony and misdemeanor drug crimes and was detained at the Jennifer Road Detention Center. Two days later, he appeared in District Court for a bail review hearing. Because he was a permanent resident alien charged with drug offenses, Mr. Haughton became subject to an Immigration and Customs Enforcement ("ICE") detainer and was denied bail.

On January 17, 2019, the Maryland State Police laboratory tested the substance seized from Mr. Haughton and "determined that CDS was not present." The test results were transmitted to Mr. Katcef "[o]n or about the same day[.]"

On January 23, 2019, Mr. Katcef entered a *nolle prosequi* to the felony drug charges, but kept in place a misdemeanor drug possession charge. Because of the ICE detainer, Mr. Haughton remained in jail. Meanwhile, Mr. Katcef and agents from the United States

Department of Homeland Security pursued additional testing of the substance seized from Mr. Haughton.[2]

On March 21, 2019, Mr. Katcef entered a *nolle prosequi* to the misdemeanor charge, and Mr. Haughton was released from detention.

Less than a year later, Mr. Haughton filed suit against Mr. Katcef, the Office of the Anne Arundel County State's Attorney, the MDTA, and two individual MDTA officers, asserting, *inter alia*, claims for false imprisonment and malicious prosecution. Mr. Haughton amended his complaint three times, adding as defendants Anne Arundel County and the State of Maryland. The operative complaint is the third amended complaint, filed on July 28, 2020, which named Mr. Katcef, Anne Arundel County, the MDTA, and the State of Maryland as defendants.[3] Because Mr. Haughton later voluntarily dismissed his claims against Anne Arundel County and the MDTA and does not challenge the trial court's grant of the State of Maryland's motion to dismiss, we shall confine our discussion to the claims against Mr. Katcef.

[2] The record contains a "Laboratory Report" from a laboratory run by the United States Department of Homeland Security. That report, which was attached as an exhibit to a motion for summary judgment filed by two MDTA officers, who later were dismissed from the case, shows that the substance was received at the laboratory on February 8, 2019, and that the test results were reported on March 20, 2019, confirming the Maryland State Police lab finding that "no controlled substances were detected[.]" Mr. Katcef entered a *nolle prosequi* to the misdemeanor charge the next day, March 21, 2019. Because we are concerned only with the propriety of the dismissal of the third amended complaint, this lab report does not factor into our analysis.

[3] The third amended complaint did not name as defendants the Office of the Anne Arundel County State's Attorney or the MDTA officers.

In his third amended complaint, Mr. Haughton asserted three causes of action against Mr. Katcef: false imprisonment (Count II); malicious prosecution (Count III); and conspiracy to violate his rights under Article 24 of the Maryland Declaration of Rights (Count VIII). In addition to the above stated allegations, Mr. Haughton alleged "on information and belief" that Mr. Katcef "conspired with agents from the Department of Homeland Security to violate [Mr. Haughton]'s Constitutional Rights" by agreeing to "ignore the results of the State of Maryland Lab tests" and by agreeing "that Homeland Security would keep the ICE detainer hold in place if Katcef kept the misdemeanor CDS charge in place." Mr. Haughton further asserted that Mr. Katcef "knew that this unlawful agreement would lead to [Mr. Haughton] being denied bail" and engaged in this conduct "so that he could continue his investigation by way of favorable laboratory shopping with agents of Homeland Security." According to Mr. Haughton, as of January 17, 2019, Mr. Katcef knew that Mr. Haughton was innocent of the charges, but "continued the unlawful proceeding for an additional 65 days to provide the Department of Homeland Security with time to conduct further investigation" and to assist that agency with its "unlawful investigatory endeavor." Finally, Mr. Haughton alleged that Mr. Katcef "acted with malice" by "maintaining" the prosecution after "knowing with certainty that [Mr. Haughton] was not in possession of CDS."

Mr. Katcef moved to dismiss the third amended complaint,[4] arguing that he was immune from civil liability for all of the claims against him under the common law doctrine

[4] Mr. Katcef amended his motion to dismiss. We refer to the amended motion.

of absolute prosecutorial immunity and/or was statutorily immune under the Maryland Tort Claims Act ("MTCA"), Md. Code Ann., State Gov't ("SG") § 12-105 (1984, 2014 Repl. Vol.). He maintained that the three claims arose from his decision not to dismiss the misdemeanor drug charge upon receipt of the Maryland State Police laboratory results, which related to his role in the judicial process as an advocate for the State, and consequently he was absolutely immune. Alternatively, Mr. Katcef claimed that he was statutorily immune because the alleged conduct was within the scope of his public duties and Mr. Haughton's factual allegations were patently insufficient to show malice or gross negligence. Regarding the claim for civil conspiracy, Mr. Katcef also argued that Mr. Haughton failed to state a claim upon which relief could be granted because Mr. Haughton did not specify with whom Mr. Katcef conspired.

Mr. Haughton opposed the motion to dismiss, arguing that Mr. Katcef was not absolutely immune because the decisions to "ignore" the State laboratory results and to "laboratory shop" in concert with federal agents were investigatory acts unrelated to the judicial process. He maintained that Mr. Katcef also was not immune under the MTCA because the facts alleged supported an inference that Mr. Katcef was grossly negligent for failing to dismiss all of the charges upon receiving the Maryland State Police laboratory results.

On March 16, 2021, the circuit court heard argument and granted the motion to dismiss the claims against Mr. Katcef and the State of Maryland.[5] The court reasoned that

[5] As indicated above, Mr. Haughton voluntarily dismissed his claims against Anne Arundel County and the MDTA.

the only "wrongful action" alleged by Mr. Haughton was "not dismissing all of the charges" on January 23, 2019, and such action was a judicial function for which Mr. Katcef was absolutely immune. In the alternative, the court ruled that, because Mr. Haughton had not pleaded his allegations of malice or gross negligence with sufficient particularity, Mr. Katcef was entitled to qualified immunity for his actions, which indisputably were within the scope of his public duties.

This timely appeal followed.

II. STANDARD OF REVIEW

We review without deference a circuit court's decision to grant a motion to dismiss. *Lamson v. Montgomery Cnty.*, 460 Md. 349, 360 (2018). We assume the truth of well-pleaded factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff. *Ceccone v. Carroll Home Servs., LLC*, 454 Md. 680, 691 (2017). However, "[m]ere conclusory charges that are not factual allegations need not be considered." *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009) (citation omitted).

III. DISCUSSION

A. Absolute Prosecutorial Immunity

Under Maryland common law, a prosecutor is absolutely immune from suit for "'decisions made and actions taken in a criminal prosecution.'" *State v. Rovin*, 472 Md. 317, 327 (2021) (quoting Black's Law Dictionary, *Prosecutorial Immunity* (11th ed. 2019)). Absolute prosecutorial immunity is intended to "protect prosecutors' independent

decision-making by ensuring that fear of unfounded lawsuits does not affect their actions." *Id*. at 345. It arises out of and is related to judicial immunity and, like that related doctrine, "does not depend on whether a prosecutor acted with malice." *Id*. at 345-46. The Court of Appeals has "adopted the functional approach" for prosecutorial immunity that is similar to judicial immunity and provides absolute immunity "with respect to claims arising from [a prosecutor's] role in the judicial process[.]" *Gill v. Ripley*, 352 Md. 754, 770 (1999). Actions taken by a prosecutor that fall within the realm of the judicial process include "evaluating whether to commence a prosecution by criminal information, presenting evidence to a grand jury in the quest for an indictment, filing charges, preparing and presenting the State's case in court, and terminating a prosecution with or without prejudice[.]" *Rovin*, 472 Md. at 346 (cleaned up). A prosecutor's investigatory or administrative functions, however, are not covered by absolute immunity. *Simms v. Constantine*, 113 Md. App. 291, 309-10 (1997).

Mr. Haughton asserts that his claims against Mr. Katcef do *not* arise from Mr. Katcef's failure to "dismiss[] the case once he received the exculpatory results from the State Police Laboratory[,]" but rather from his alleged conspiracy "with federal agents to prevent Mr. Haughton from obtaining bail thus causing Mr. Haughton to be incarcerated for an additional 60 days." According to Mr. Haughton, Mr. Katcef engaged in such conspiracy "for the sole purpose of continuing an investigation by way of laboratory shopping for a favorable outcome." Mr. Haughton concludes that Mr. Katcef's acts were

"not intimately and inexorably tied to the prosecutorial phase of the judicial process[,]" but rather were investigatory, falling outside the scope of absolute immunity.

The State responds that Mr. Haughton's framing of his allegations improperly focuses upon the harm suffered by Mr. Haughton (approximately 60 days of additional pretrial detention) and the related allegation that Mr. Katcef had the intent to prevent Mr. Haughton from obtaining bail, instead of the conduct for which immunity is claimed. The State argues that the functional approach to absolute immunity requires that this Court assess only whether Mr. Katcef's conduct fell within his role as a prosecutor in the judicial process. According to the State, Mr. Katcef's actions in the instant case – "evaluating evidence for trial, deciding when and how to prosecute, and terminating the case" – were quintessentially prosecutorial acts, not investigatory acts.

In *Simms v. Constantine*, 113 Md. App. at 309-10, this Court explained that the immunity available for prosecutors varies depending upon whether they are engaged in "1) judicial, 2) administrative, and 3) investigative functions." In that case, three Baltimore City police officers, each of whom had been indicted on charges of perjury and ultimately had the charges against them dismissed, filed suit against the State's Attorney for Baltimore City, an Assistant State's Attorney, and the Baltimore City Police Commissioner, alleging that the defendants had conspired to fabricate charges against the officers as part of a retaliatory campaign instigated by the mayor of Baltimore City. The officers had participated in applying for and executing a search warrant at the home of a relative of the wife of the mayor. The officers alleged that (1) more than three months after the execution

of that search warrant, the officer who was the affiant on the warrant application was indicted by a grand jury on a charge of perjury, and (2) three months after that, additional indictments were handed down charging all three officers with perjury arising from unrelated search warrant applications.

In our analysis, we reviewed a trilogy of Supreme Court decisions – *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976), *Burns v. Reed*, 500 U.S. 478, 495 (1991), and *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993) – that defined the scope of federal common law doctrine of absolute prosecutorial immunity. We distilled from those cases that acts closely linked to a "prosecutor's preparation for and conduct of the trial[,]" such as decisions about the presentation of evidence and the use of witnesses, *Simms*, 113 Md. App. at 308 (citing *Imbler*, 424 U.S. at 426-27), and acts closely linked to the prosecutor's role as an advocate for the State, such as appearing before a judge or magistrate and presenting evidence in support of a motion for a search warrant, *id*. at 311-13 (citing *Burns*, 500 U.S. at 491-92), were closely connected to the judicial process and subject to absolute immunity. Conversely, acts that were "'purely investigative,'" such as giving advice to a police officer concerning an interview of a suspect during the investigative stage of the case, fell outside the realm of absolute immunity. *Id*. at 314 (quoting *Burns*, 500 U.S. at 495).

In *Simms*, this Court focused upon the allegations of the complaint that the prosecutors had spent months, allegedly in concert with the Police Commissioner, working to develop charges against the three officers. We inferred that the prosecutors had engaged in an "extensive examination of numerous warrant applications[,]" reasoning that this was

"quite distinct from the day-to-day, garden-variety filing of routine criminal charges." *Id.* at 301. The "massive investigation" of "dozens, if not hundreds, of warrant[]" applications was "quintessentially investigative in nature," and the prosecutors were not entitled to absolute immunity for claims arising from that conduct. *Id.* at 320-21. The officers also alleged that one of the prosecutors offered to refrain from charging them and/or to dismiss charges already instituted in exchange for the officer submitting his resignation. *Id.* at 321. This Court likewise held that such alleged conduct fell outside the prosecutor's judicial functions. *Id.*

More recently, in *Rovin*, 472 Md. at 317, the Court of Appeals expounded upon the investigatory versus advocacy distinction in a different context. Rovin was prosecuted and acquitted of juror intimidation and second-degree assault. Thereafter, she filed suit against the State's Attorney for Wicomico County and an Assistant State's Attorney, along with other defendants, asserting claims including false arrest, false imprisonment, and malicious prosecution. *Id.* at 326, 328-29. The circuit court granted summary judgment in favor of the prosecutors, concluding that they were entitled to absolute and qualified immunity for their actions. *Id.* at 329. On appeal, this Court reversed in an unreported decision, holding that Rovin was entitled to discovery before summary judgment could be ruled on by the trial court. *Id.* at 340-41. The Court of Appeals granted a writ of *certiorari* and reversed this Court, holding, as pertinent, that the prosecutors were absolutely immune. *Id.* at 330-31.

The Court of Appeals determined that the four actions taken by the prosecutors – (1) giving advice to a law enforcement officer about the institution of charges against Rovin, (2) providing information to another prosecutor in advance of Rovin's bail review hearing, (3) filing a criminal information against her, and (4) representing the State at the trial – clearly were undertaken within "their role as prosecutors in the judicial process." *Id*. at 350-51. The Court examined more closely whether the prosecutors' advice to a law enforcement officer about charges that could be filed against Rovin was an action closely connected to the judicial process. The Court observed that the prosecutors' actions in evaluating whether Rovin "should have been charged with an offense in the District Court" was "as much a part of the judicial process as 'evaluating whether to commence a prosecution by criminal information[.]'" *Id*. at 352 (quoting *Gill*, 352 Md. at 770)). Significantly, the Court pointed out that the prosecutors did not give advice with respect to an investigation – such as evidence gathering or interrogation. *Id*. at 355. Thus the Court held that the prosecutors' giving of advice to a law enforcement officer concerning the filing of an application for a statement of charges with a judicial officer was an act covered by absolute immunity. *Id.* at 355-56.

Finally, the decision in *Buckley* is particularly instructive to the instant case. In *Buckley* the Supreme Court considered whether prosecutors were absolutely immune from civil liability in a case brought by a man who spent three years in pretrial detention charged with the rape and murder of a child before the case ultimately was dismissed. 509 U.S. at 261, 264. Buckley filed suit under 42 U.S.C. § 1983 against the prosecutors, asserting

claims arising from allegedly false statements made at a press conference at the time of his arrest and from allegations that the prosecutors fabricated evidence during the "preliminary investigation." *Id*. at 261-62.

The Court held that the statements made at the press conference clearly fell outside of a prosecutor's role in the judicial process and absolute immunity would not attach. *Id.* at 276-78. The issue of the prosecutors' acts during the investigation was a closer one. The prosecutors were alleged to have "conspired to manufacture false evidence that would link [Buckley's] boot with [a] bootprint the murderer left on the front door" by "shop[ping] for experts until they found one who would provide the opinion they sought." *Id*. at 272. The prosecutors had received three separate studies by experts "all of whom were unable to make a reliable connection between the print and a pair of boots that [Buckley] had voluntarily supplied[.]" *Id.* at 262. The prosecutors then obtained a '"positive identification"' from an expert "who was allegedly well known for her willingness to fabricate unreliable expert testimony." *Id.* Notwithstanding the "positive identification," the prosecutors convened a special grand jury for the sole purpose of investigating the case. *Id.* at 263-64. After an eight month investigation, the special grand jury failed to return an indictment. *Id.* at 264. Two months later, however, an indictment was returned against Buckley, without any additional evidence. *Id.* Buckley's prosecution resulted in a mistrial, followed two years later with a dismissal of the charges when a third party confessed to the crime and the unreliable expert had died. *Id.*

The Court rejected Buckley's "extreme position" that absolute immunity "extends only to the act of initiation itself and to conduct occurring in the courtroom." *Id.* at 272. The Court stated that "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity[,]" including "the professional evaluation of the evidence assembled by the police and appropriate preparation for its presentation at trial or before a grand jury after a decision to seek an indictment has been made." *Id*. at 273. The Court, however, noted that there was "a difference between the advocate's role in evaluating evidence and interviewing witnesses as he prepares for trial, on the one hand, and the detective's role in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested, on the other hand." *Id*.

After a "careful examination" of the allegations, the Supreme Court concluded that the prosecutors' actions during the period before they convened the special grand jury, coupled with the nature of the alleged conduct, revealed that the prosecutors were acting as investigators, not as advocates for the State, when they sought a favorable expert opinion concerning the boot print. *Id*. at 274. At that time, the prosecutors did not claim to have probable cause to arrest Buckley (or anyone else) for the rape and murder and their mission was "entirely investigative[.]" *Id.* Even after obtaining the favorable expert opinion, the prosecutors did not convene a grand jury to charge Buckley, but rather decided to investigate the crime and determine if charges could be filed against anyone. *Id*. at 275.

Returning to the instant case, we are satisfied that allegations of the third amended complaint, viewed in a light most favorable to Mr. Haughton, demonstrate that Mr. Katcef was acting in his judicial role, not an investigative role, when he carried out the actions giving rise to the claims against him. At the outset, we note that our analysis must focus on Mr. Katcef's conduct for which absolute immunity is claimed, "not on the harm that the conduct may have caused or the question whether it was lawful[,]" *Buckley*, 509 U.S. at 271, and "regardless of [his] reasons for acting[,]" *Rovin*, 472 Md. at 350.

The first act by Mr. Katcef referred to in the third amended complaint was his decision to "dismiss the felony drug charges and keep in place a misdemeanor CDS possession charge[,]" after receiving the Maryland State Police laboratory test results indicating '"no presence of CDS."' Mr. Haughton made no allegations that Mr. Katcef participated in any way regarding the events leading up to Mr. Haughton's arrest at the airport on December 29, 2018, or the filing of the felony and misdemeanor charges in the District Court at the time of his arrest. In our view, the decision to dismiss a criminal charge and to prosecute another criminal charge against a defendant is central to a prosecutor's role in the judicial process. *Gill*, 352 Md. at 774 (stating that "the decision to terminate a prosecution, with or without prejudice," is "within the ambit of absolute prosecutorial immunity" and "stands on the same footing as a decision whether to commence a particular prosecution, whether to charge one offense rather than another …"). Indeed, Mr. Haughton stated twice in his brief to this Court that his "argument is not that

[Mr.] Katcef should have dismissed the case once he received the exculpatory results from the State Police Laboratory."

Instead, Mr. Haughton claims that Mr. Katcef is not entitled to absolute immunity because Mr. "Katcef conspired with federal agents to prevent Mr. Haughton from obtaining bail thus causing Mr. Haughton to be incarcerated for an additional 60 days." We disagree.

According to the third amended complaint, the only action taken by Mr. Katcef that resulted in Mr. Haughton's continued incarceration was that he "kept the misdemeanor CDS charge in place[,]" that is, Mr. Katcef continued the prosecution of the misdemeanor charge after the dismissal of the felony charges. The continuation of the prosecution of a criminal charge is clearly a part of a prosecutor's role in the judicial process. *See Rovin*, 472 Md. at 346 (stating that prosecutors enjoy absolute immunity from claims arising out of "preparing and presenting the State's case in court"); *Gill*, 352 Md. at 770 (same). Mr. Haughton, however, alleges that Mr. Katcef (1) "knew that [Mr. Haughton] as a green card holder ("permanent resident alien[']) would be denied bail and remain incarcerated as there was an ICE detainer lodge[d] against him[,]" and (2) "knew that this unlawful agreement would lead to [Mr. Haughton] being denied bail." These allegations, however, set forth the reasons for Mr. Katcef's continued prosecution of the misdemeanor drug charge, and as previously stated, the "reasons for acting" are not relevant to whether a prosecutor's conduct is protected by absolute immunity. *Rovin*, 472 Md. at 350; *Buckley*, 509 U.S. at 271-72.

Mr. Haughton also asserts that Mr. Katcef's continued prosecution of the misdemeanor drug charge against Mr. Haughton was not part of the judicial process because Mr. Katcef engaged in such prosecution "to lead and continue an investigation." Specifically, Mr. Haughton alleged that Mr. Katcef "continue[d] his investigation by way of favorable laboratory shopping with agents of Homeland Security." We again disagree.

In *Simms*, this Court observed that "the timing of the prosecutor's participation is a vitally important factor in determining whether his participation is judicial or investigative in character[.]" 113 Md. App. at 317. We held in *Simms* that the conduct of the prosecutors, which involved "a massive investigation of dozens, if not hundreds, of warrants applied for by those three officers over an extended period of time" and "led to the filing of those four additional perjury charges[,]" was investigative in nature. *Id.* at 320-21. In *Buckley*, the Supreme Court held that the prosecutors' conduct, which involved obtaining a favorable, but unreliable, expert opinion, admitting that there was no probable cause for an arrest, and then convening a special grand jury to further investigate, "occurred well before they could properly claim to be acting as advocates." 509 U.S. at 275. Here, in contrast, the MDTA officers filed criminal charges against Mr. Haughton based upon a positive presumptive field test, which cleared the relatively low bar of probable cause. *See, e.g., State v. Johnson*, 458 Md. 519, 535 (2018) (discussing the probable cause standard). Mr. Katcef's involvement began only after Mr. Haughton had been arrested.

Furthermore, in his role as an advocate for the State, Mr. Katcef was obligated to evaluate the evidence assembled by the police and to properly prepare for its presentation

at trial. *Buckley*, 509 U.S. at 273. Evaluating evidence often involves seeking of additional evidence in order to satisfy the State's burden of proving guilt beyond a reasonable doubt at trial. In the instant case, a positive presumptive drug test at the airport led to Mr. Haughton's arrest and the filing of criminal charges against him. Mr. Haughton alleged that the presumptive drug test "produced a 20% error rate[.]" Thereafter, the Maryland State Police lab tested the substance seized from Mr. Haughton and found "no presence of CDS." Mr. Haughton, however, alleged that the Maryland State Police lab "had difficulty detecting CDS in liquids such as honey" and "did not have the capabilities of analyzing the liquid specimen."[6] As a result, Mr. Katcef was confronted with two conflicting test results regarding the presence of illegal drugs in the "honey" seized from Mr. Haughton. In his role as a prosecutor, Mr. Katcef sought to resolve that conflict by "favorable laboratory shopping" for another test of the subject substance.[7] Therefore, we hold that Mr. Katcef's actions in continuing the prosecution of Mr. Haughton on a misdemeanor drug charge in order to seek another laboratory test were within his role as a prosecutor to evaluate the

[6] Notwithstanding his allegations regarding the Maryland State Police lab's inability to adequately perform testing on a liquid specimen, Mr. Haughton also alleged that because of the test results from the Maryland State Police lab, Mr. Katcef "knew with certainty … that Mr. Haughton was in fact an innocent man[.]" Conflicts or inconsistencies in the allegations of a complaint are to be construed against the pleader. *See Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 362 (2012) (in considering the sufficiency of the allegations of a complaint, "we construe any ambiguity in the complaint against the pleader"); *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009) ("[a]ny ambiguity or uncertainty in the allegations" of a complaint are construed against the pleader).

[7] A reasonable inference from the allegations of the third amended complaint is that Mr. Katcef did secure a third test of the subject substance, which confirmed the negative results of the Maryland State Police lab, and led to the dismissal of the charges against Mr. Haughton. As indicated in footnote 2, *supra*, that is in fact what happened.

evidence as he prepared for trial, and such actions were not investigative in nature. Accordingly, Mr. Katcef's actions are protected by absolute immunity.

Finally, although Mr. Haughton frames Mr. Katcef's actions as malicious and intended to ensure that Mr. Haughton would be detained without bond, the Court of Appeals made clear in *Rovin* that, "allegations of malice do not defeat prosecutorial immunity." 472 Md. at 350 (citing *Gill*, 352 Md. at 770). Likewise, the harm caused by the alleged actions is immaterial if absolute immunity applies.[8] *See Buckley*, 509 U.S. at 271-72 (the functional approach to prosecutorial immunity "focuses on the conduct for which immunity is claimed, not on the harm that the conduct may have caused[.]") Therefore, we hold that the conduct of Mr. Katcef that gave rise to Mr. Haughton's claims falls within the domain of absolute immunity, and the circuit court did not err by dismissing the third amended complaint on that ground.

B. Qualified State Personnel Immunity

Even if Mr. Katcef's conduct was not protected by absolute immunity, Mr. Haughton's claims would fare no better under the MTCA. Prosecutors, as state personnel, are immune from "'liability in tort for a tortious act or omission that is within the scope of [their] public duties . . . and is made without malice or gross negligence[.]'" *Rovin*, 472 Md. At 327 (quoting Md. Code, Cts. & Jud. Proc. § 5-522(b)). "In the context of assessing immunity under the MTCA, malice is defined as behavior 'characterized by evil or

[8] We recognize that Mr. Haughton's detention for an additional 60 days on a charge ultimately determined to be without merit was injurious. We do not intend to diminish the significant harm that he suffered by our recognition that it does not factor into the legal analysis in this case.

wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud.'" *Newell v. Runnels*, 407 Md. 578, 636 (2009) (quoting *Barbre v. Pope*, 402 Md. 157, 182 (2007)). Gross negligence is "'an intentional failure to perform a manifest duty in reckless disregard of the consequences[.]"' *Barbre*, 402 Md. at 187 (quoting *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 635 (1985)). "Gross negligence is not just big negligence" and therefore "[o]nly conduct that is of extraordinary or outrageous character will be sufficient to imply this state of mind." *Stracke v. Est. of Butler*, 465 Md. 407, 421 (2019) (quoting *Thomas v. State*, 237 Md. App. 527, 537 (2018), *rev'd*, *State v. Thomas*, 464 Md. 133 (2019)) (cleaned up).

It is undisputed that Mr. Katcef's actions were undertaken in the performance of his public duties as a prosecutor. The third amended complaint is devoid of any non-conclusory allegations of fact sufficient to create an inference of malice[9] or gross negligence. Mr. Haughton does not allege that Mr. Katcef's continuation of the prosecution and pursuit of additional testing after receiving the Maryland State Police laboratory results were motivated by animus toward Mr. Haughton or an evil motive. Additionally, the allegations that Mr. Katcef engaged in "laboratory shopping" in concert with federal agents before entering a *nolle prosequi* do not suffice to support an inference that that conduct was of an '"extraordinary or outrageous character"' sufficient to show

[9] Mr. Haughton arguably waived any allegation that Mr. Katcef acted maliciously, because in his response to the motion to dismiss the third amended complaint, Mr. Haughton stated that he did not "seek to pierce the statutory immunity veil under the [MTCA] by alleging malice but rather gross negligence" and again at the hearing on that motion, he disclaimed any evidence that Mr. Katcef acted with malice.

gross negligence.[10] *Id.* at 421(quoting *Thomas*, 237 Md. App. at 537). For these reasons, the circuit court also did not err by dismissing the third amended complaint on the alternative basis that Mr. Katcef was protected by State personnel immunity.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[10] Indeed, Mr. Haughton never uses the term "gross negligence" in the third amended complaint.