UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0531

September Term, 2014

MATTHEW B. ROSE

v.

MAUNDA WILLIAMS

Eyler, Deborah S.,
Zarnoch,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: May 4, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Matthew B. Rose was arrested in the early morning hours of August 22, 2012 based on Officer Maunda Williams's belief that Mr. Rose had participated in a high-speed car chase with police. As it turns out, Officer Williams mistook Mr. Rose for a passenger in the car that he and his fellow officers ultimately cut off, but his mistake only became apparent after he detained Mr. Rose and took him into custody. Mr. Rose filed suit against Officer Williams in the Circuit Court for Baltimore City, alleging false arrest, false imprisonment, negligence, battery, and a violation of Article 24 of the Maryland Declaration of Rights. Officer Williams moved for summary judgment, the circuit court granted the motion, and Mr. Rose appeals. We agree with the circuit court that under the governing standard, which requires that we look at the facts as they unfolded from Officer Williams's point of view, Mr. Rose failed to raise any disputes of material fact as to Officer Williams's probable cause to arrest him, and so we affirm.

I. BACKGROUND

On August 22, 2012, Officer Williams was working an 11:00 p.m. to 7:00 a.m. shift in a patrol car when a car passed him on Reisterstown Road travelling approximately seventy miles per hour. Officer Williams turned on his lights and sirens and followed the car, which did not stop. He could not safely catch up to the car, so he alerted other officers, who joined in the pursuit. After these officers located the vehicle, Officer Williams responded and rejoined the chase as the third police car in pursuit. He saw passengers in the car throw bags out the car windows; based on his experience and training, he believed the bags to contain marijuana.

Officer Williams and the officers in the other patrol cars ultimately blocked in the fleeing car on Windsor Mill Road. His answers to interrogatories detail what happened next:

> The passenger doors of the suspect vehicle slowly began to open, and [Officer Williams] did not see any pedestrians on either side of the street at that time. As the passengers of the suspect car opened the doors, the suspect vehicle suddenly made a hard left turn and crashed into [Officer Williams's] patrol vehicle, damaging the front bumper. *At the moment of impact, [Officer Williams] observed [Mr. Rose] run from the rear passenger side area of the suspect vehicle. Based on [Mr. Rose's] proximity to the vehicle and the fact that he immediately ran, [Officer Williams] believed that [Mr. Rose] had just exited the suspect vehicle.* [Officer Williams] observed [Mr. Rose] sprinting across Windsor Mill Road. [Officer Williams], having not seen anyone else on the street prior to [Mr. Rose], gave chase on foot.

(Emphasis added.) Mr. Rose's version of events differs from that of Officer Williams, and we will discuss below the extent to which his story contradicts the Officer's and whether the contradictions matter.

Mr. Rose ultimately filed a five-count Complaint alleging claims of false arrest (Count I), battery (Count II), false imprisonment (Count III), negligence (Count IV), and a violation of his state constitutional rights (Count V). Officer Williams moved for summary judgment on all of Mr. Rose's claims, arguing that he had probable cause to arrest Mr. Rose, used reasonable force in doing so, and was entitled to qualified immunity on the negligence claims. Mr. Rose responded that there was a genuine dispute of material fact as to whether Officer Williams had probable cause for the arrest, and that the dispute "as to

where [Mr. Rose] was, and where he had been, prior to his arrest . . . goes to the heart of [Mr. Rose's claim] as [it] is determinative of the issue of probable cause."

The record does not contain any request for a hearing on the Motion by Officer Williams, although it looks like Mr. Rose requested one. But on the date of the hearing, counsel for Mr. Rose did not appear; to his credit, he apparently spoke by phone with the judge's chambers and notified them that he forgot about the hearing, and the trial judge explained on the record that she would go forward.[1]

The discussion (since it wasn't really an argument) between counsel for Officer Williams and the circuit court centered on Officer Williams's perspective at the time he saw Mr. Rose, which counsel sought to clarify using a map that showed the relative positions of the players. As counsel explained it, Officer Williams did not even see Mr. Rose until "immediately after the [collision] occurred"—that is, he did not see Mr. Rose *exit* the vehicle, but saw him "behind the suspect vehicle . . . and believed that [Mr. Rose] was one of the individuals in the suspect vehicle." When the court asked why that misperception alone was not sufficient to deny the Motion, counsel explained that the dispute was not whether the plaintiff was in the vehicle, but whether Officer Williams "had probable cause to believe that [Mr. Rose] had committed a crime." Differently put, the

[1] The judge detailed her approach: "I will proceed to hear the argument on the summary judgment motion, I will assure [counsel for Mr. Rose] by telephone that I have reviewed the papers and feel confident after argument today that I will be able to determine the motion, including consideration of his paperwork."

material fact was not whether Mr. Rose was involved, but whether Officer Williams *reasonably believed that he was involved* given what he saw at the time.

The trial judge declined to rule from the bench, stating that in light of the absence of Mr. Rose's counsel, she would review the pleadings and affidavits again before ruling. On May 7, 2014, the court granted the Motion in a written order and found that "there is no dispute of material fact as to [Mr. Rose's] location(s) during the unfolding incident and as to [Mr. Rose's] arrest by [Officer Williams] with legal justification, with probable cause, with reasonable force, and without malice." Mr. Rose filed a timely notice of appeal.

II. DISCUSSION

Parties routinely parrot the phrase "genuine dispute of material fact" when reciting the standard for summary judgment, but rarely focus on the word "material." That word matters—a plaintiff cannot defeat summary judgment simply by identifying a dispute of fact, but must identify a genuine issue of *material* fact. There is no doubt here that Mr. Rose's account of the events of August 22 contradicted Officer Williams's. But although Officer Williams turned out to be wrong about whether Mr. Rose had been one of the passengers in the fleeing car, we agree with the circuit court that that disagreement was not *material* to the core issues in the case. This may seem unfair, as it leaves Mr. Rose without a remedy. But we have to agree with the circuit court that Officer Williams, while ultimately mistaken in his belief that Mr. Rose was involved in the melee, stayed within the confines of his duties and is not liable to Mr. Rose as a matter of law because he had

probable cause to arrest Mr. Rose. Mr. Rose's remaining arguments[2] that the circuit court erred in granting the Motion likewise fail: we conclude that he did not allege sufficient evidence of malice or unreasonable force to support a claim that his constitutional rights were violated, and no battery took place because there was insufficient evidence of excessive force.

A. Standard Of Review Of A Summary Judgment Motion.

Maryland Rule 2-501(a) permits summary judgment "on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." *Id.* The circuit court must review the record in the light most favorable to the non-moving party, *Barclay v. Briscoe*, 427 Md. 270, 282 (2012), and we in turn review the grant of summary judgment *de novo* to determine whether the circuit court's reasoning was legally correct. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993). A party attempting to defeat a summary judgment motion must "identify with particularity each

[2] Mr. Rose phrased the questions in his brief as follows:

> 1. Did the Trial Court err in failing to find in the record a genuine dispute of material fact related to the issue of probable cause?
>
> 2. Did the Trial Court err in failing to find evidence of malice in the record?
>
> 3. Did the Trial Court err in granting summary judgment to [Officer Williams] on Counts I, II, III and V of the Complaint?

material fact in genuine dispute and provide support for its contentions 'by an affidavit or other written statement under oath.'" *Educ. Testing Servs. v. Hildebrant*, 399 Md. 128, 139 (2007) (quoting Md. Rule 2-501(b)). The "purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is *sufficiently material to be tried.*" *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 74 (2006) (emphasis added) (quoting *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 533-34 (2003)).

This case is all about materiality. What makes a fact material is that it affects the outcome of the case: "a dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment." *O'Connor v. Baltimore Cnty.*, 382 Md. 102, 111 (2004) (emphasis in original) (quotation marks and citations omitted).

B. Officer Williams Had Probable Cause To Arrest Mr. Rose.

Mr. Rose's claims of false arrest and false imprisonment raise the same legal question, which is whether his arrest or continued detention was "made without legal authority." *Roshchin v. State*, 219 Md. App. 169, 177 (2014). Whether an arrest has been made with "legal justification," for purposes of analyzing the propriety of a false arrest/false imprisonment claim, is "judged by the principles applicable to the law of arrest." *Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 655 (1970). Although there are circumstances where this "legal justification" might have more to do with an officer's authority than it does with probable cause, *see, e.g.*, *Ashton v. Brown*, 339 Md. 70, 120

(1995), the parties agree that here the overarching question is whether Officer Williams had probable cause to arrest Mr. Rose.[3]

"We have defined probable cause as facts and circumstances sufficient to warrant a prudent person in believing that the suspect had committed or was committing an offense." *Okwa v. Harper*, 360 Md. 161, 184 (2000) (citations and quotation marks omitted). As the Court of Appeals explained in *Okwa* (where the plaintiff filed suit for false imprisonment and myriad other claims based on his allegedly improper detention at the airport by Maryland Transportation Authority officers), "the question of whether a law enforcement officer had probable cause to make a particular arrest is determined on 'factual and practical considerations of everyday life on which reasonable and prudent [people] . . . act.'" *Id.* (quoting *State v. Ward*, 350 Md. 372, 396 (1998)). "To determine whether an officer had probable cause, under that conception, 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." *DiPino v. Davis*, 354 Md. 18, 32 (1999).

With that standard in mind, we look at the events here from Officer Williams's point of view, mindful nonetheless that we review the facts in the light most favorable to Mr.

[3] The Court in *Ashton* had reason to parse out the distinction: there, the plaintiffs challenged a juvenile curfew ordinance that the Court of Appeals ultimately ruled was unconstitutionally vague, so the question became the arresting officers' *legal authority* under the warrant rather than the existence of probable cause. *Id.* at 120.

Rose as the non-moving party.[4] As Officer Williams saw it, he had reason to believe that Mr. Rose was attempting to escape the car:

- The incident took place at about 1:30 in the morning after a high-speed chase.
- During the chase, Officer Williams saw the car's occupants attempt to jettison potentially incriminating evidence.
- As the doors to the vehicle began to open, Officer Williams did not see any pedestrians in the area around the car.
- The vehicle drove toward Officer Williams's patrol car, hitting the front bumper, *just as he saw* Mr. Rose "run from the rear passenger side area of the suspect vehicle."
- Mr. Rose did not comply at first with Officer Williams's order to put his hands behind his back.

From Mr. Rose's perspective, he did nothing wrong (and, by the way, we agree). He claims he jumped out of the way of police cars that had blocked in the vehicle that was evading police. He then "jumped" onto a nearby lawn to avoid being struck. He argues to us here that his testimony "materially contradicts the facts upon which [Officer Williams] relies to establish probable cause," and argues in his brief that he was running from a different direction than Officer Williams believed him to be, and that he actually crossed in front of one of the police cars.

[4] This might sound contradictory, but it isn't. We view the facts in the light most favorable to Mr. Rose, and accept his account as true. But the legal standard requires us to look at what Officer Williams believed to be happening, and as we explain below, Mr. Rose, while he may think that belief to be unreasonable, does not suggest (and didn't to the circuit court) that Officer Williams was lying.

The question for summary judgment purposes is, even looking at the facts in the light most favorable to Mr. Rose, whether his version of events gives rise to a genuine dispute of material fact that defeats Officer Williams's summary judgment motion. We answer that question in the negative, primarily because, to the extent any dispute existed, it was not *material* to the fundamental probable cause question. Whether Mr. Rose was in *fact* simply crossing the street, Officer Williams's affidavit establishes that *he believed* that Mr. Rose was exiting the car at the time, and that belief was in line with what a reasonable officer would have believed at that time.

Although "[Mr. Rose's] description of the occurrence mentions nothing about his being anywhere near the vehicle being pursued by the police at any time," Mr. Rose *does* concede that he jumped out of the way of the two police cars that surrounded the vehicle, and that concession puts him squarely in the eye of the storm. While he can haggle about where he was in the eye, his testimony does not directly counter Officer Williams's testimony that he was within it. So although "we recognize that 'the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation,'" *Holmes v. State*, 209 Md. App. 427, 438 (quoting *Smith v. State*, 415 Md. 174, 183 (2010)), *cert. denied*, 431 Md. 445 (2013), the circuit court did not face differing inferences on summary judgment about what Officer Williams believed.

Mr. Rose asks "how can the [circuit court] have determined that [Officer Williams] had correctly concluded that it was *probable* that [Mr. Rose] had been in the suspect vehicle?" (Emphasis in original.) This is the wrong question: we do not evaluate the

probability that Officer Williams was in fact *correct*, but whether Officer Williams was *reasonable* in believing that he had probable cause to arrest based on his (ultimately incorrect) perception of what took place. As part of that analysis, we look at the scene that Officer Williams faced: an early morning high-speed chase, with suspects trying both to destroy evidence and to elude police, that ultimately led to suspects trying to flee both on foot and by using their vehicle as a weapon.[5] Although he turned out to be wrong about Mr. Rose, that does not mean that his assessment of the situation was unreasonable at the time, and the circuit court appropriately granted the Motion based on his perception of events.

[5] Although Mr. Rose's counsel argued before us that he should have had more opportunities to probe Officer Williams through a deposition about the reasonableness of his belief, the record reveals that discovery had been open for some time. Mr. Rose filed the Complaint on July 12, 2013, and served requests for admissions and a request for production of documents on November 22, 2013. Although our search of the record does not reveal that he served interrogatories, he must have done so, as Officer Williams filed a notice of service of *answers* to interrogatories on December 3, 2013. Officer Williams moved for summary judgment on February 28, 2014, and the Hearing did not take place until May 5. It does not appear that counsel for Mr. Rose ever noted Officer Williams's deposition (or at least the record does not reflect any attempts to do so)—and, in fact, we see no way that would have helped. In his opposition to the Motion, Mr. Rose characterized the facts in this case as "uncomplicated," and he never made any suggestion at the circuit court level that further discovery should have delayed the court's consideration of the Motion. *See* Md. Rule 2-501(d) (permitting the court to order a continuance for further discovery to take place, where a party opposing summary judgment submits an affidavit justifying its failure to set forth facts essential to its opposition).

C. There Was No Evidence That Officer Williams Acted With Malice, And His Actions Were Reasonable.

Mr. Rose claims that the circuit court improperly granted summary judgment on his constitutional claims because he raised sufficiently a factual question about whether Officer Williams acted with malice, which would defeat any potential claim of immunity on Officer Williams's part. From there, he claims that because Officer Williams's actions were unreasonable, he should have been permitted to take a claim for violation of his State Constitutional rights to the jury. We cannot agree. Mr. Rose's allegations fail to contradict Officer Williams's factual account in this regard, and we see no evidence in the record of any conduct from which malice could reasonably be attributed to Officer Williams. Moreover, Officer Williams acted reasonably in light of the circumstances surrounding Mr. Rose's arrest.

a. Lack of malice.

As a general rule, an officer cannot be held liable for a claim of violation of constitutional rights (or, for that matter, other torts arising from his conduct in his capacity as a police officer) unless he acted with malice or gross negligence:

> The MTCA did away with the principle of sovereign immunity in certain circumstances, *Tollenger v. State*, 199 Md. App. 586, 595 (2011), such that the State assumes liability for "intentional torts and constitutional torts as long as they were committed within the scope of state employment and without malice or gross negligence." *Lee v. Cline*, 384 Md. 245, 256 (2004). If the employee is found, however, to have acted *with* malice or gross negligence, even though in the course of his employment, the State does not assume liability for his conduct.

Brooks v. Jenkins, 220 Md. App. 444, 459 (2014); *see also Thomas v. City of Annapolis*, 113 Md. App. 440, 455 (1997).

To establish actual malice, a plaintiff must establish that the defendant acted with "an evil motive or rancorous motive influenced by hate." *Port Deposit v. Petetit*, 113 Md. App. 401, 416 (1997) (citation and quotation marks omitted). The Court of Appeals explained in *Lee v. Cline*, 384 Md. 245 (2004), that "intent and motive are critical to the question of malice." *Id.* at 259. In that case, the arrestee, an African-American motorist, sued a deputy sheriff for violations of his constitutional rights claiming racial profiling, retaliation, and wrongful detention. The Court of Appeals reversed the circuit court's entry of summary judgment in favor of Deputy Cline because there was a genuine issue of material fact as to whether he had acted with ill will or improper motive. In that case hard evidence that could have supported a jury verdict to that effect: Deputy Cline took far longer to effectuate the arrest than he should have (forty minutes as opposed to ten); requested a canine unit to search Mr. Lee's vehicle, in spite of the fact that there was no evidence to suggest a need for one; and the initial justification for the stop (that Mr. Lee was driving without a license plate) fell away based on Mr. Lee's reasonable explanation. As the Court put it, "[a] jury might reasonably infer that the only factors which motivated Cline's calling Lee an uncooperative 'suspect' were that Lee was an African-American male driving a luxury car who refused to consent to a search." *Id.* at 270.

In stark contrast to the deputy sheriff's conduct in *Lee*, Mr. Rose's account of the underlying facts of this case does not raise any hint of malice on the part of Officer Williams:

> Two police officers ran up to [Mr. Rose] and ordered him to get on the ground and put his hands up. [Mr. Rose] got down on his knees with his hands in the air, saying: "Officer, I don't know what's going on. What happened?" At that point [Officer Williams] punched [Mr. Rose] in his right rib cage, causing [Mr. Rose] to collapse. [Officer Williams] ordered [Mr. Rose] to get on the ground. [Mr. Rose] said: "I am on the ground."
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> A second officer, identity unknown, handcuffed [Mr. Rose] while he was lying on the ground. While doing this the officer kneed [Mr. Rose] in his left hip and left rib cage. [Officer Williams] then grabbed [Mr. Rose] by his collar and dragged him into the street. [Officer Williams] positioned [Mr. Rose] so that he was lying face down, with his legs in the street and his torso on the grass, with his hands cuffed behind him.

Here we have absolutely *no* facts that suggest malice on the part of Officer Williams, looking at "intent and motive," and the circumstances surrounding the critical event. There was no prior history between these two men; Officer Williams certainly didn't take longer to act than he should have; Officer Williams acted under exigent circumstances; and although the Officer used some force to effectuate the arrest, Mr. Rose has not suggested any racial or other inappropriate motive for the arrest (and in fact, based on Officer Williams's account, there's no suggestion that he was aware of the race of Mr. Rose or anyone else he believed to be in the vehicle). We find that the circuit court correctly

granted summary judgment given the absence of factual allegations that could support a finding of malice or gross negligence.

b. Reasonableness of the arrest.

Much as we view probable cause from Officer Williams's perspective, we look at whether an officer acted reasonably in the course of an arrest when reviewing constitutional claims. Article 24 to the Maryland Declaration of Rights guarantees due process rights, but when a plaintiff's "claim is based on an alleged arrest without proper justification, we will apply the same standard in assessing [it] as is applicable to an alleged violation of the Fourth Amendment to the United States Constitution." *Roshchin*, 219 Md. App. at 181 (citations omitted). Again, we don't take a result-oriented look at what happened at the time of the arrest:

> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *See Terry v. Ohio*, 392 U.S. 1, 20-22 [(1968)]. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, *Hill v. California*, 401 U.S. 797 (1971), nor by the mistaken execution of a valid search warrant on the wrong premises, *Maryland v. Garrison*, 480 U.S. 79 (1987). With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," *Johnson v. Glick*, 481 F.2d 1028, 1033 [(2d Cir. 1973)], violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and

> rapidly evolving—about the amount of force that is necessary in a particular situation.

Graham v. Connor, 490 U.S. 386, 396-97 (U.S. 1989).

Richardson v. McGriff, 361 Md. 437 (2000), involved an officer confronted with difficult and exigent circumstances similar to those that Officer Williams faced here. In that case, a suspect had broken into a vacant apartment, hidden in a kitchen closet, and refused to come out when police came to search. When the officers came into the (dark) kitchen, which smelled of marijuana, one officer quickly opened the closet door, and Officer McGriff found himself face-to-face with the victim, who was holding what appeared to be a large weapon (and was in fact a vacuum cleaner pipe) that he lowered into what the officer believed was a firing position. The officer claimed that he acted in self-defense when he shot at Mr. Richardson, and a jury returned a verdict in his favor on the victim's charges of battery, gross negligence, and violation of his rights under Article 26.

The Court of Appeals affirmed, and in doing so reaffirmed the notion that when determining the reasonableness of the officer's conduct, it was appropriate to consider events leading up to the incident in question. *Id.* at 454. Whether certain circumstances "*in hindsight* could be regarded as negligent or imprudent, they existed and, at the crucial moment, could not be changed. At the moment [the second officer] opened the closet door and McGriff saw what appeared to him to be an armed man lowering his weapon to firing position, *what was he to do?*" *Id.* at 459. (Emphasis in original.)

We saw the opposite end of the spectrum, and found that an officer's conduct could be viewed by a jury as unreasonable, in two related cases: *Hines v. French*, 157 Md. App. 536 (2004) ("*Hines I*"), in which we permitted Ms. Hines to go forward with a claim against Deputy Sheriff John French based on a mistaken arrest, and again in *French v. Hines*, 182 Md. App. 201 (2008) ("*Hines II*"), which affirmed the jury verdict in her favor. The arresting officer had pulled Ms. Hines out of her truck, and in the course of arresting her had smashed her head into the side of her truck (after, according to her, laughing about the fact that he could tell she'd recently had jaw surgery). *Hines II*, 182 Md. App. at 212-13. In our first opinion, we concluded that a jury could properly credit Ms. Hines's allegations and find excessive force:

> [Ms. Hines has] provided sufficient support for the assertion that Deputy French used unreasonable force. Had Deputy Sheriff French been confronted with several occupants of the vehicle or had there been an indication that [Ms. Hines] harbored a weapon or had resistance been offered once appellant alighted from the truck, the reasonableness of the force exerted would be cast in a different light. Viewing the alleged facts in a light most favorable to [Ms. Hines], a jury could conclude that Deputy French used excessive force when he pointed his gun at [Ms. Hines], "grabbed her and threw her up against the side of her truck," and "slamm[ed] her head into the side of the truck." Although Deputy French gives an entirely different account of the events, the resolution of any factual disputes are for trial and not summary judgment.

Hines I, 157 Md. App. at 578 (citations omitted).

But we see nothing in Officer Williams's conduct, even as Mr. Rose alleges it, that would suggest that he acted unreasonably. Officer Williams had reason to think that Mr.

Rose had come out of the perpetrators' car and was attempting to flee, which in turn gave him the basis to initiate an arrest. Although Mr. Rose resisted only slightly (and, in hindsight, understandably), he resisted nonetheless, and Officer Williams did not act unreasonably in subduing him. Mr. Rose blurs the distinction between the factual correctness of the arrest and the excessive force required for an Article 24 claim, and while we agree that it was *unfair* that he was wrongly arrested, he is not entitled to pursue constitutional claims against Officer Williams.[6]

D. There Was No Evidence Of Excessive Force.

In *Hines II*, we held that "contact incident to an arrest cannot form the basis of a claim for battery. Indeed, officers are privileged to commit a battery pursuant to a lawful arrest, subject to the excessive force limitation." 182 Md. App. at 265-66 (citations omitted). At the same time, as the Court of Appeals recognized in *Okwa*, a genuine dispute of material fact as to the proportionality of the force the officer used in an arrest will preclude summary judgment:

> It would not be unreasonable for a fact finder to infer that [the officers] were motivated by an extreme and overzealous desire to punish Mr. Okwa for failing to obey immediately their instructions to walk away from the ticket counter and exit the terminal. *The alleged fact, if believed, that peace officers beat a citizen about his head and neck while they twisted his thumbs, could support an inference that [the officers] were inspired*

[6] We emphasize "Officer Williams" because there is some implication in Mr. Rose's answers to interrogatories that a second officer was involved in his arrest. But the actions of that officer, who is not identified and is not a party to this case, cannot be imputed to Officer Williams. *See Smith v. Bortner*, 193 Md. App. 534, 557 (2010).

> *with malicious intention. Such behavior fits the type of conduct which would strip the actor's immunity otherwise provided under the MTCA. See Shoemaker v. Smith*, 353 Md. 143, 164 (1999). Because disputed material facts exist in the record, or inferences of malicious conduct may be drawn from Mr. Okwa's version of the facts, the battery counts were not amenable to disposition via summary judgment.

Okwa, 360 Md. at 182 (emphasis added). Here, we have nothing like what the officers faced, or how they conducted themselves, in *Okwa*. For the reasons we discussed above, Officer Williams's conduct does not rise to the level of excessive force, but was reasonable under the circumstances, and the trial judge did not err in granting summary judgment on the battery claim.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.