

Circuit Court for Charles County
Case No. C-08-CV-18-000136

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1056

September Term, 2019

COLBERT CARTER, JR.

v.

CHARLES COUNTY, MD, ET AL.

Reed,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: May 4, 2021

*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.

Colbert Carter, Jr. (“Appellant”) brought suit against Charles County, Maryland, Charles County Sherriff’s Office, Officer Kevin Makle (“Appellee Makle”), and Officer David Walker (“Appellee Walker”) (collectively “Appellees”) in the Circuit Court for Charles County, Maryland for false arrest, false imprisonment, battery, negligence, violations of Maryland Declaration of Rights, and intentional infliction of emotional distress. Following a mistrial and retrial in which the jury rendered a verdict in favor of Appellees, Appellant presents one question for appellate review:

- I. Is it reversible error for the trial court to exclude testimony regarding material facts of the punching and kicking of Appellant by Appellees that were disclosed in discovery, but not specifically alleged in the Amended Complaint?

For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Arrest

On March 29, 2015, Appellant was driving his motor vehicle in the area of Route 301 and Smallwood Road in Waldorf, Charles County, Maryland when he was involved in a two-car motor vehicle accident. Appellant and the other driver moved their vehicles into the Exxon parking lot at 3690 Crain Highway and called law enforcement to report the accident. Prior to law enforcement’s arrival, Appellant went to use the bathroom. Appellees were two of the several officers who responded to the scene of the accident. Appellee Makle approached Appellant and walked him back to his vehicle. Appellant was then assisted to sit down on a nearby curb. Appellant’s person and vehicle were searched during this time due to Appellee Makle detecting the scent of marijuana and alcohol

coming from Appellant. The parties dispute if Appellant was told he was under arrest. Specifically, Appellant testified and alleged that he was given no notice that he was under arrest:

[Plaintiff Counsel]: Did at any time officer – sorry, [Appellee] Makle before you were tazed tell you that you were under arrest?

[Plaintiff]: No.

[Plaintiff Counsel]: Did he tell you what you were being placed under arrest for?

[Plaintiff]: No.

Contrary to Appellant’s statements, Appellees alleged that Appellant was informed that he was under arrest and failed to comply, leading to the use of a taser on Appellant. This testimony was elicited:

[Plaintiff Counsel]: Okay. After you placed [Appellant] under arrest, what happened then?

[Officer Makle]: When I attempted to place him under arrest, at which point in the video you’ll see he goes, he’s sitting on the curb, he goes back. As he goes back, he goes face down on his stomach, hands go in the waistband, at which point you’ll see me trying to pull his arms out. Officer Schwab’s on the other side trying to pull his arm out. We cannot pull his arm out, at which point I stand up, I pull my taser out, I tell him I’m going to taze you if you don’t pull your arms out, which point he does not comply. I go back down and I drive stun him for, I think it was two seconds and he complied and he was handcuffed.

After being tazed, Appellant alleged that he was punched and kicked by several officers, including Appellees Makle and Walker. Appellant was subsequently arrested and

charged with several crimes which were later entered *nolle prosequi* by the State's Attorney's Office for Charles County, Maryland. Appellant thereafter filed a lawsuit against Appellees seeking compensatory and punitive damages. Within Appellant's Amended Complaint, he specifically alleged under Count III, Battery, that Appellees deployed a taser on his person as an intentional act to "bring about a harmful and offensive contact with" his person. Additionally, under Count IV, alleging State Constitutional Rights Violations, Appellant claimed he was subjected to "the use of unreasonable, unnecessary, and excessive force, deprivation of his due process rights, deprivation of his equal protection rights, [and] police misconduct." Appellant did not mention being punched or kicked in the Amended Complaint. Prior to trial, Appellant was deposed during discovery and revealed allegations that he was punched and kicked in addition to being tasered.

B. Trial

Trial began on Monday July 29, 2019 in the Circuit Court for Charles County. Prior to the start of trial, the court granted Appellees motion *in limine* to preclude Appellant from providing any testimony of alleged threats received from Deputies of the Charles County Sheriff's Department since March 29, 2015. There was no request to preclude Appellant from testifying about being punched and kicked during the incident on March 29, 2015. During trial, Appellant testified that he "got kicked and punched" after being placed in handcuffs. Counsel for Appellees immediately objected, arguing that Appellant failed to allege punching and kicking in his Amended Complaint. The court overruled the objection on the grounds that counsel for Appellees could address Appellant's testimony on cross

because it spoke to his credibility. Appellant continued testifying until he mentioned being harassed, at which point counsel for Appellees objected citing the motion *in limine*. The court sustained the objection and following a second mention of harassment, counsel for Appellees moved for a mistrial. Outside the presence of the jury, counsel for Appellees reminded the court that the motion requested to “specifically exclude any reference to harassment.” In response, the court granted the mistrial citing to the violation of the motion *in limine* as well as the insufficiency of the Amended Complaint as to the absent allegations of Appellant being punched and kicked.

The following day, retrial of the case began and counsel for Appellant raised a motion to reconsider the trial court’s initial ruling to exclude testimony and evidence of punching and kicking. Counsel for Appellant began by citing to several cases that established the general standard for pleadings in Maryland. In response, the trial court raised concerns regarding the specificity of the battery allegations in relation to damages rather than the sufficiency of the allegations:

[Plaintiff Counsel]: And, Your Honor, I just want to make sure I, I [sic] bring to the [c]ourt’s attention Court of Appeals case Arfaa verse [sic] Martino, 40 Maryland 364, which states under Maryland’s liberal rules of pleading, the Plaintiff need only state such facts in the complaint as are necessary to show an entitlement to relief and take that in conjunction with Johnson verses Value [sic] Food, Inc, 132 Maryland App 118, it’s a 2000 case, Court of Appeals, and that was specific with regard to a person and said a declaration is sufficient under the modern system of pleading if it contains a plain statement of the facts necessary to constitute a ground of action. And where the injury complained of is an injury to the person, it is sufficient to describe it briefly

and in general terms. So, Your Honor, my argument with those --

[Trial Court]: And let me, let me, during your argument let me know how – which averment in the complaint was being considered by the [c]ourt. And I ask that question because part of my thought process is there is such specificity as to the instrument of the battery in this case that it does not appear to be a general allegation of an act of battery. But any, I –

[Plaintiff Counsel]: Absolutely.

[Trial Court]: That's, I'm going to look at the cases, we'll pull them up because I'm concerned about that because I'm familiar with the fact that a general allegation is usually sufficient and is flushed out in discovery, interrogatories, et cetera. But here where you've specified taser and the concern beyond that becomes do I say to the jury, I mean a, in awarding damages it considers outside the allegation of the taser? Anyway, but that's what I'm concerned about. I'll let you go on with your argument.

[Plaintiff Counsel:]: No, I completely understand, Your Honor. But having cited the law there, my argument is, and I understand your concern, the fact that the taser was, was [sic] specifically mentioned; however, if Plaintiff had been less specific in the complaint, had simply said on such and such date at such and such time by such and such person, Plaintiff – or Defendant committed a, an unlawful offensive contact.

[Trial Court]: That would have been great, that would have been okay.

[Plaintiff Counsel]: But that's my point, Your Honor, if, if [sic] that would have been sufficient and if that would have been sufficient [sic], then Plaintiff could here today at trial present testimony of a taser, of kicking, and punching by that same Defendant, then, then [sic] how is it that Plaintiff's being specific about the use of the taser somehow doesn't provide them sufficient notice, because that seemed to be the [c]ourt's concern

yesterday, they weren't on notice of this. But as we also discussed yesterday, Your Honor, during the deposition this was discussed, so there's, there's [sic] no prejudice whatsoever. This, the kicking and the punching was discussed by, by – was questioned by Defense and stated by Plaintiff. And I can show you the deposition if that would help your honor.

The trial court went on to review the cases cited by Appellant. First, the trial court found *Arfaa* inapplicable because it addressed whether a petition for a mechanics lien adequately described the property subject to the lien for pleading purposes. 404 Md. 364, 365 (2008). Next, the trial court found *Johnson* distinguishable because, although it concerned the sufficiency of a complaint seeking damages for battery and false imprisonment, the issue was whether Johnson's complaint adequately pled damages. 132 Md. App. 118, 125 (2000). In the present case, Appellant adequately pled damages but what remained in question was whether the complaint sufficiently notified Appellees of the alleged battery to support the damages being sought. Ultimately, while the trial court agreed "[i]n viewing the pleadings you don't have to be specific" it distinguished "in this instance there has been an election and I don't see a general allegation of battery, I see a specific allegation of battery." Appellant's motion for reconsideration was denied and he was barred from producing any testimony or evidence about being harassed in addition to being punched, kicked, or anything that could constitute battery outside the use of the taser. After four days, trial concluded, and the jury returned a verdict in favor of Appellees on all counts.

DISCUSSION

A. Parties' Contentions

Appellant contends that the trial court erred in precluding evidence at trial that Appellant was punched and kicked by Appellee Officers because Appellant's Amended Complaint sufficiently put Appellees on notice of those allegations under Maryland's pleading requirements. Appellant argues that the short and plain statement in the Amended Complaint which described "an event [where] misconduct by Appellees caused injury to Appellant and rose to the level of battery and excessive force" was included specifically to satisfy notice under Maryland Rules of Civil Procedure and that such statement did constitute sufficient notice.

Appellant further contends that the discovery process also provided enough notice to Appellees that evidence of punching and kicking by Appellees could be produced at trial, eliminating any surprise. While Appellant's Amended Complaint did not specifically allege punching and kicking, Appellant contends that during discovery Appellees were made aware of the allegations and thus given adequate notice of them.

Finally, Appellant contends that the trial court's error was not harmless and that it unfairly prejudiced Appellant. It is Appellant's position that since the Amended Complaint gave Appellees adequate notice of the battery and excessive force claims and the discovery process provided relevant details (i.e. the punching and kicking) to prevent any unfair surprise, the trial court's decision to exclude such evidence prejudiced Appellant at trial. Specifically, Appellant contends that by being barred from testifying to the punching and kicking, the jury was unable to hear evidence of Appellees' alleged conduct beyond use of the taser, which spoke directly to the battery and excessive force counts. Appellant proffers

that presentation of such evidence to the jury would have produced a verdict in favor of Appellant. Accordingly, Appellant requests this Court reverse the decision of the trial court.

Appellees contend that the trial court did not err in excluding evidence of Appellant being punched and kicked because Appellant's failure to include such allegations in his Amended Complaint constituted insufficient notice. Relying on *Scott v. Jenkins*, Appellees argue that Appellant's amended complaint did not properly place them on notice because there was no way to know Appellant intended the scope of his battery and use of force claims to include the alleged punching and kicking. 345 Md. at 28. (“[P]leading plays four distinct roles in our system of jurisprudence... [o]f these four, notice is paramount”) *Id.* at 27-28 (abrogated by statute on other grounds). They maintain that Appellant's Amended Complaint was so “specific and unambiguous” to the allegation that he “was battered and subjected to excessive use of force when being tazed” that to allow testimony of being punched and kicked directly contradicts the purpose of the Maryland pleading rules. While Appellees concede that “Maryland law does not require a plaintiff to plead the ‘minute circumstances’ giving rise to a claim” they argue that the allegations of punching and kicking are far from minute and “are the types of allegations that must be front and center in a complaint to put a defendant on notice of the claims presented.”

Appellees also contend the lack of adequate notice in the Amended Complaint is not supplemented by Appellant raising the allegations of punching and kicking during the discovery process. Specifically, Appellees cite to “[Appellant]’s lack of candor in his written discovery responses, his poor recollection regarding the incident during his

deposition, and his decision not to sue all of the deputies at the scene” to suggest that Appellant’s battery and excessive use of force claims derived solely from the use of the taser. Finally, Appellees contend that even if the trial court had abused its discretion in excluding the evidence, such error was harmless. Appellees proffer that Appellant’s inability to identify which officers punched and kicked him along with his failure to sue all the officers at the scene, alone, would outweigh any testimony about the punching and kicking allegations, rendering the same verdict for Appellees. Accordingly, Appellees request that the decision of the trial court stand.

B. Standard of Review

Generally, the decision to admit or exclude testimony is “committed to the considerable and sound discretion of the trial court and reviewed under an abuse of discretion standard.” *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 48 (2016) (quoting *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)) (internal quotations omitted). There is an abuse of discretion when a trial court’s decision is “manifestly unreasonable or is based on untenable grounds.” *Moser v. Heffington*, 465 Md. 381, 406 (2019). Moreover, an abuse of discretion is a decision by the trial court that is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.” *Martinez ex rel. Fielding v. The John Hopkins Hosp.*, 212 Md. App. 634, 658 (2013) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

However, a decision by the trial court shall not be reversed “if the error is harmless.” *Flores v. Bell*, 398 Md. 27, 33 (2007). “Courts are reluctant to set aside verdicts for errors

in the admission or exclusion of evidence unless they cause substantial injustice.” *Brown v. Daniel Realty Co.*, 409 Md. 565, 584 (2009) (quoting *Flores v. Bell*, 398 Md. 27, 34 (2007)).

C. Analysis

Maryland Rule § 2-303 requires that:

(b) Contents. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings are required. A pleading shall contain only such statements of fact as may be necessary to show the pleader’s entitlement to relief or ground of defense. It shall not include argument, unnecessary recitals of law, evidence, or documents, or any immaterial, impertinent, or scandalous matter.

Md. Rule § 2-303(b). The important purposes of Maryland’s pleading rule have been outlined by the Court of Appeals as “(1) provides notice to the parties as to the nature of the claim or defense; (2) states the facts upon which the claim or defense allegedly exists; (3) defines the boundaries of litigation; and (4) provides for the speedy resolution of frivolous claims and defenses.” *Woolridge v. Abrishami* 233 Md. App. 278, 296 (2017) (quoting *Scott v. Jenkins*, 345 Md. 21, 27-28 (1997)).

When addressing the adequacy of a pleading, the Court of Appeals has also noted that “[g]enerally speaking, a declaration is sufficient under the modern system of pleading if it contains a plain statement of the facts necessary to constitute a ground of action. Where the injury complained of is an injury to the person, it is sufficient to describe it briefly and in general terms.” *Johnson v. Valu Food, Inc.*, 132 Md. App. 118, 124 (2000) (quoting *Miller v. Howard*, 206 Md. 148,153 (1955)). Appellant accurately cites to these rules in outlining the framework for pleadings generally under Maryland law. But by homing in on

the purposes of a pleading generally, Appellant overlooks the distinction of pleading requirements for a claim of punitive damages.

Appellant contends the specificity of the amended complaint does not diminish its sufficiency because the plaintiff is only required to plead general facts to adequately notify the defendant of the event which led to the alleged battery. Essentially, Appellant argues if the complaint would be sufficient under this bare minimum standard then it is not compromised because he chose to go above that standard and provide specific incidents of battery, namely the taser. But as noted by the trial court in its review of Appellant's motion to reconsider, Appellant went beyond stating general facts to the point "there [was] such specificity as to the instrument of the battery in [the] case that it does not appear to be a general allegation of an act of battery."

The Court of Appeals in *Scott* addressed "whether a complaint seeking monetary damages for a tort must make a specific claim for punitive damages *and* whether that complaint must set forth facts that, if proven true, would entitle the plaintiff to punitive damages." 345 Md. 21, 25 (1997). In that case, Corporal Robert Scott, a Prince George's County Police Officer, was investigating an assault and battery. *Id.* at 25. While Corporal Scott assisted in detaining a juvenile suspect, an individual by the name of Terry Jenkins informed Corporal Scott the juvenile was not responsible for the crime, rather it was someone else. At some point, "[f]or reasons disputed by the parties, Jenkins and Scott engaged in a scuffle" resulting in the arrest of Jenkins who subsequently filed several charges, including battery, against Corporal Scott. *Id.* In Jenkins' Amended Complaint, he did not make a specific claim for punitive damages or allege that Corporal Scott acted with

actual malice. *Id.* at 26. At the close of trial, Jenkins “requested the submission of a punitive instruction to the jury” and Corporal Scott objected, arguing that Jenkins failed to plead punitive damages in his Amended Complaint. *Id.* at 27. The objection was overruled, and the jury returned a verdict for Jenkins prompting Corporal Scott’s appeal to this Court where we affirmed the trial court. *Id.* In reversing the judgment of punitive damages only on remand, the Court of Appeals held to sufficiently plead for punitive damages, a plaintiff’s complaint must not only demand such relief but must also “allege, *in detail*, facts that, if proven true, would support the conclusion that the act complained of was done with “actual malice. Nothing less will suffice.” *Id.* at 37. (emphasis added).

In the case at hand, Appellant seeks punitive damages and properly requested those damages in his Amended Complaint. Appellant also pled, with specificity, to the use of the taser as evidence of battery and excessive force warranting such damages. However, Appellant failed to include the specific details of being punched and kicked in his Amended Complaint, which was proffered at trial to show actual malice on the part of the officers. (“[I]n order to recover punitive damages, in *any* tort action in the State of Maryland, facts sufficient to show *actual malice* must be pleaded...”) *Id.* at 29. “Punitive damages are awarded” for the purpose of punishing “a defendant whose conduct is characterized by evil motive, intent to injure, or fraud, and to warn others contemplating similar conduct of the serious risk of monetary liability.” *1st Team Fitness, LLC*, 228 Md. App. 137 (2016) (citing *Owens-Illinois, Inc., v. Zenobia*, 325 Md. 420,454 (1992)). Accordingly, as held by the Court of Appeals in *Scott*, “because a higher standard of proof precedes a recovery of punitive damages, it follows that *a more detailed factual allegation is necessary* to put the

other party on notice that such damages [are] being sought.” 345 Md. 21, 35 (1997) (emphasis added).

Although Appellant contends that Appellees received sufficient notice of the punching and kicking allegations through discovery and general allegations of the Amended Complaint, the trial court was correct to point out that failure to include allegations of punching and kicking along with the specific use of the taser constituted insufficient specificity to adequately notify Appellees as to the evidence of actual malice that Appellant sought to introduce. Those allegations were necessary to punitive damages and should have been pled in accordance with Md. Rule 2-303(b) in Appellant’s Amended Complaint.

Admission of evidence supporting the punching and kicking allegations would have gone to establish actual malice of Appellees under the battery and excessive use of force claims which could not have been determined from the four corners of the Amended Complaint or Appellant’s ambiguous answers provided during discovery. When pleading a civil battery claim for punitive damages, the complaint must sufficiently and specifically allege facts of the battery to provide the other party adequate notice of the malicious conduct that warrants such damages. *Id.*

It is this Court’s holding that Appellant’s failure to include the allegations of punching and kicking in his Amended Complaint rendered it insufficient to putting Appellees on adequate notice of the malicious conduct warranting punitive damages. Further, even if the trial court had been in error when it excluded evidence of the punching and kicking allegations, such error was harmless. The ambiguities, uncertainties, and poor

recollection of details produced by Appellant during the discovery process persuades this Court that admission of the punching and kicking allegations would have done nothing more than raise more ambiguity because it would not provide the jury any clarity as to who inflicted the battery and excessive use of force on Appellant. Without being able to attribute the acts to either Appellees, it is unlikely that the jury verdict would have changed in favor of Appellant.

Accordingly, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**