

Circuit Court for Anne Arundel County  
Case No.: C-02-CV-23-000148

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1114

September Term, 2023

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JUSTYN ELIJAH MYLES

v.

STATE OF MARYLAND, ET AL.,

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Arthur,  
Reed,  
Zarnoch, Robert, A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: October 7, 2024

\*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).

In the Circuit Court for Anne Arundel County, Justyn Myles, appellant, filed suit against the State of Maryland, appellee; Maryland State Trooper Erin Lowe, individually and in her official capacity, also an appellee (collectively “the State defendants”); and Anne Arundel County, asserting claims for negligence, gross negligence, negligent training and supervision, false arrest, and failure to protect.<sup>1</sup> The claims arose from alleged acts and omissions at the scene of an accident on a rainy January night involving a single vehicle in which Myles was the front-seat passenger. The circuit court granted the County’s motion to dismiss the claims against it and Myles does not challenge that ruling on appeal. Prior to discovery, the circuit court granted summary judgment in favor of the State defendants on all counts. Myles appeals, presenting three questions, which we have rephrased:

I. Did the circuit court err by ruling as a matter of law that Myles was not arrested when he was transported to the police barracks to wait for a ride home?

II. Did the circuit court apply an incorrect standard in analyzing a deliberate indifference claim under the Maryland Declaration of Rights and, if so, did genuine disputes of material fact preclude the grant of summary judgment on that claim?

III. Did the circuit court err in granting summary judgment in favor of the State defendants on the three negligence counts because it failed to recognize that Trooper Lowe owed Myles a heightened duty of care owing to the formation of a special relationship?

For the following reasons, we answer those questions in the negative and affirm the judgment of the circuit court.

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<sup>1</sup> Some of Myles’ claims were statutory, namely the Maryland Tort Claims Act (“MTCA”), Md. Code, State Gov. §§ 12-101 – 12-110, some were common law-based, and the last two were constitutional claims under the Maryland Declaration of Rights.

## **BACKGROUND**

On January 25, 2020, just after 2 a.m., the Maryland State Police received a call reporting that a vehicle had crashed on westbound Route 50 in Davidsonville, Maryland. Trooper Lowe responded to the scene, where she observed a white Crown Victoria sedan that had crashed into a guardrail. The vehicle contained two men, later identified as Ryan King, the driver, and Myles, the passenger. Ultimately, King was arrested for driving while intoxicated and Myles was transported in a police vehicle to the Maryland State Police barracks in Annapolis to wait for his father to pick him up.

### **The Complaint**

Almost three years later, Myles filed his complaint in the circuit court. As pertinent to the issues on appeal, he alleged the following facts: 1) he and King lost consciousness in the collision, ¶ 13; 2) at least one airbag deployed, ¶ 14; 3) “[u]pon her arrival, Trooper Lowe observed both Mr. Myles and the driver of the vehicle still in the vehicle and unresponsive[,]” ¶ 17; 4) EMTs on the scene did not examine, evaluate, assess, treat, or transport Myles to a hospital and left the scene while he remained unconscious, ¶¶ 20-24; 5) “[s]ince Mr. Myles was unconscious, he was unable to walk on his own and was placed into a police vehicle for transport prior to being medically evaluated by Trooper Lowe[,]” ¶ 27; 6) “[a]t some point, he was removed from the police vehicle, taken into the police station, and laid on a hard bench without any supervision[,]” ¶ 29; 7) he awoke around 3 a.m. in pain and “disoriented,” ¶ 31; 8) Myles requested information from the person working at the front desk, but “wasn’t provided any answers[,]” ¶ 32; 8) “[a]pproximately one (1) hour later, he was released without charges or a citation[,]” ¶ 35; 9) Myles has no

independent recollection of the accident, ¶ 36; 10) the following day, Myles was experiencing pain and went to the hospital where he was diagnosed with a concussion and a spinal fracture, ¶¶ 39-40; 11) his injuries necessitated “significant physical therapy and rehabilitation[,]” ¶ 41.

His complaint asserted five counts against the State defendants<sup>2</sup>:

- Count I: Negligence (the State defendants)
- Count II: Gross negligence (Trooper Lowe)
- Count III: Negligent training and supervision (the State)
- Count V: False arrest under Articles 24 and 26 of the Maryland Declaration of Rights (the State defendants)
- Count VI<sup>3</sup>: Failure to protect under Articles 24 and 26 of the Maryland Declaration of Rights (the State defendants)

In the first two counts and the sixth count, Myles alleged that Trooper Lowe had a duty to obtain medical care for Myles after he was observed unconscious on the side of the road and breached that duty by failing to evaluate him for injuries or obtain medical treatment for him despite his remaining unconscious the entire time they were at the scene. He alleged that “[o]ne or more officers or emergency medical personnel dragged or carried Mr. Myles to the police vehicle” which “[t]hey knew or should have known . . . could exacerbate any undiscovered injuries that Mr. Myles had.” ¶ 54 In Count V, Myles alleged that Trooper Lowe falsely arrested him by transporting him against his will in a still unconscious state to the police barracks. In Count III, Myles alleged that the State negligently trained and

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<sup>2</sup> Count IV asserted claims against the County that are not before us.

<sup>3</sup> This count is misnumbered in the complaint as Count VII.

supervised Trooper Lowe because it failed to prevent her from committing tortious acts against Myles and/or violating his rights under the Maryland Declaration of Rights.

**The State Defendants’ Motion to Dismiss  
and/or for Summary Judgment**

Prior to any discovery, the State defendants moved to dismiss the complaint or, in the alternative, for summary judgment. They attached to the motion an affidavit of Trooper Lowe averring that her police cruiser was equipped with a Mobile Video Recorder, *i.e.*, a dash camera, that was in full working order on January 25, 2020, and that she also wore a “belt microphone” that captured audio. A copy of the dash camera video with a total running time of twenty-four minutes and fifty-six seconds also was attached to the motion.

***A. The Dash Camera Video***

When the video began, a police cruiser with its lights activated was parked partially in the rightmost westbound travel lane of Route 50 and partially on the shoulder in front of Trooper Lowe’s police cruiser. The Crown Victoria sedan (“the sedan”) was in front of the police cruisers, fully on the shoulder against the guardrail, with its passenger side door wide open.

Trooper Lowe appeared on video for the first time at the eight second mark, walking into view from the passenger side of her vehicle. She walked toward the sedan along with a second officer and continued past it with her flashlight out, before returning to look at the rear license plate. Meanwhile, the second officer approached the open passenger side door of the sedan where he was illuminated by Trooper Lowe’s flashlight, along with a

man standing at the open door who later was identified as King. The second officer asked King to provide his full name.

Trooper Lowe returned to her police cruiser where she could be heard speaking to a dispatcher on her radio, using the identifier “J6.” The second officer walked King toward Trooper Lowe’s police cruiser. Trooper Lowe began talking to King and noted that his mouth was bleeding. She conducted a field sobriety test and obtained his consent to administer a breathalyzer test. At the 8:25 mark, Trooper Lowe advised King that he would be checked by EMS but that he had had “way too much to drink tonight” and would be “coming with [her], okay?” She reiterated that first he would be “checked out” to make sure he was okay.

Meanwhile, a little over five minutes after the video began, a fire department vehicle arrived at the scene. About five minutes later, an ambulance arrived. An officer walked toward the sedan with his flashlight and briefly illuminated the passenger side of the sedan where Myles was now standing. Myles walked around the back of the sedan in the direction of the ambulance, disappearing from view.

Trooper Lowe returned to the sedan at the 11:31 mark, after being advised by another officer to check the driver side floorboard. As she approached the vehicle, Myles walked around the back and began entering the passenger side. Trooper Lowe asked him, “Whatcha doing man?” Another person responded, “He’s getting his ID.” Myles also responded that he was trying to get his ID. Trooper Lowe asked him, “Where is it?” He responded, “It should be in my front pocket. In the top pocket.” Ten seconds later, Myles walked back behind the Crown Victoria and away from it.

While Trooper Lowe and other officers accessed the sedan and recovered marijuana, alcohol, and a cell phone, Myles was not visible on camera. It was apparent that he was standing nearby, however, because Trooper Lowe asked him, “did you ever get your ID, man?” He could be heard replying, “No.” She asked him, “Whose weed is that? He responded, “I’m not sure.” Upon request, he provided his full name and his date of birth, which she radioed to dispatch.

A moment later Trooper Lowe said, “I don’t know where the ambulance is [because] he was supposed to check out the driver.” Someone interjected, “we already checked him.” After that, an EMT returned to the ambulance and within a minute the fire department vehicle and the ambulance both left the scene.

Meanwhile, Trooper Lowe asked Myles if he had a phone and directed him to “call someone who can come get you.” A few minutes later, after Myles’ cell phone was located in the vehicle, the following exchange occurred:

Trooper Lowe:       Who are you gonna call?

Myles:                My father.

Trooper Lowe:       All right. Where’s he live?

Myles:                Charles County.

Trooper Lowe:       Charles County? You’re going to have to come to the barracks then [because] I can’t have you sitting out here all night.

Myles:                Okay.

Trooper Lowe:       Not gonna. Not gonna do that.

The video does not capture Myles leaving the accident scene.

***B. The Motion***

The State defendants argued that the allegations of the complaint were “conclusively contradicted by . . . video evidence attached to [their] motion[.]” Specifically, they contended that the dash camera video, coupled with the averments of Trooper Lowe’s affidavit, established that Myles was “awake and conscious, and possessed the ability to walk and communicate with [Trooper] Lowe and the other first responders at the scene.”

According to the State defendants, under the authority of *Scott v. Harris*, 550 U.S. 372, 380 (2007), the circuit court was permitted to adopt the version of the facts that was supported by the video evidence because it “blatantly contradicted” the allegations of the complaint. They maintained that the video evidence was dispositive on Counts I and II because it demonstrated that Trooper Lowe neither breached a duty owed to Myles, nor were any actions taken by her the proximate cause of his injuries. They further argued that the undisputed video evidence showed that Myles consented to being transported to the police barracks to wait for a ride, disposing of his false arrest claim under Count V. Judgment on Count VII, failure to protect, was appropriate because Trooper Lowe did not actually know of and disregard a substantial risk of injury to Myles. Alternatively, Trooper Lowe was statutorily immune under the Maryland Tort Claims Act (“MTCA”), codified at Md. Code, State Gov. §§ 12-101 – 12-110, because she was acting at all times within the scope of her official duties and did not act with gross negligence.

**Myles’ Opposition to the Motion**

In his opposition, Myles maintained that Trooper Lowe “arrest[ed] and forcibly transport[ed]” him to the police barracks rather than taking him to the hospital. He attached

one exhibit: a Maryland State Police, Calls for Service View Call Report (“the Report”), which appears to capture radio transmissions concerning the traffic accident.

The Report states that the initial call for service was received at 2:01 a.m. on January 25, 2020. The “Incident Notes” include the following pertinent timeline:

- 2:02 a.m.: “Single vehicle 10-50. Everything on the right shoulder. Passenger is unresponsive.”  
“EMS en route”  
“Airbags are deployed.”
- 2:07 a.m.: “J6<sup>[4]</sup> on scene”
- 2:09 a.m.: “Passenger regaining consciousness.”
- 2:11 a.m.: “J25 advising passenger is ok. Driver needs EMS now though.”
- 2:16 a.m.: “Fireboard on scene. Lanes 2 and 3 now blocked”
- 2:17 a.m.: Identifying information for King and Myles entered.
- 2:19 a.m.: “[Driver] under arrest for DUI”
- 2:25 a.m.: “PC search begin”
- 2:27 a.m.: “CDS found”
- 2:28 a.m.: “Marijuana. It’s on the driver.”
- 2:44 a.m.: “J21 relaying passenger to J Bk to stand by for a ride.”
- 3:05 a.m.: “J21 en route to Bk w/passenger.”

The bottom of the Report lists two responding officers: Trooper Lowe and Trooper Daniel Phillips.

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<sup>4</sup> As mentioned, Trooper Lowe identified herself as J6 during the dash camera video.

Myles argued that the Report contradicted key aspects of the State defendants’ motion. The Report documented that Myles did not begin regaining consciousness until two minutes *after* Trooper Lowe arrived on the scene, which was not inconsistent with the video given that Myles was not visible for the first ten minutes. He maintained that video revealed that he had an unsteady gait and was “extraordinarily disoriented,” searching for his ID in the car despite telling Trooper Lowe that it should be in his pocket. He also argued that the video seemed to begin after Trooper Lowe first arrived because she first appears on camera on the passenger side of her vehicle, not the driver side.

Given that the parties had not yet engaged in any discovery, Myles asserted that it would be premature for the circuit court to grant summary judgment in favor of the State and Trooper Lowe considering the discrepancies between the video evidence, Myles’ admittedly blurry recollections of the events, and the Report. He attached an affidavit of defense not available under Rule 2-501(d)<sup>5</sup> in which counsel for Myles averred that if the court was inclined to convert the motion to one for summary judgment, it should grant a continuance to permit further discovery. She specified the following discovery that would be necessary to permit Myles to oppose the motion:

the complete dash camera video from Defendant Lowe’s vehicle, the dash camera video from Trooper Daniel Phillips and/or any other Maryland State Police trooper who was also on scene, policies and procedures from

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<sup>5</sup> Rule 2-501(d) states:

If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

Maryland State Police regarding what to do when a victim loses consciousness after a vehicle collision, training manuals and other materials regarding responses to unwitnessed traffic accidents, and depositions of the individual defendant and Trooper Phillips as well as other witnesses who responded to the scene.

On the merits, Myles argued that Trooper Lowe was not immune from suit because the facts pled, coupled with the video and the Report, were sufficient to permit a rational factfinder to conclude that she acted with gross negligence. He maintained that Trooper Lowe’s failure to request that any of the EMTs on scene evaluate Myles prior to transporting him to the police barracks amounted to utter indifference to his rights. With respect to his claim for false arrest, Myles argued that Trooper Lowe’s statement to him that he was “going to have to” wait for a ride at the police barracks amounted to an order and that his response of “Okay” could not be construed as consent. He maintained that by ordering him to go to the police barracks, Trooper Lowe deprived him of his liberty without legal justification in violation of his rights under Articles 24 and 26 of the Maryland Declaration of Rights. At the same time, by taking him into police custody, Trooper Lowe formed a special relationship with Myles that subjected her to a heightened duty to protect him from harm, which included an affirmative obligation to seek necessary medical care for him.

### **Summary Judgment Hearing**

The court heard argument on the motion, treated it as one for summary judgment, and granted judgment in favor of the State defendants on all counts. The court acknowledged Myles’ challenge to the lack of time stamps on the video, but found that for purposes of the motion, it was immaterial because “the information that would be needed

for this particular decision in this particular case seems to be encapsulated in the video completely.” The Report helped to “time frame everything.” For purposes of the motion, the court assumed that Myles had been unconscious at some point but emphasized that the video established as undisputed fact that Myles was conscious, coherent, and conversant in his interactions with Trooper Lowe on the scene.

Beginning with Count II, gross negligence, the court determined as a matter of law that Trooper Lowe did not recklessly disregard Myles’ rights or act with malice while responding to the traffic accident. On that basis, the court determined that Trooper Lowe was statutorily immune for Count I, simple negligence. Alternatively, the court granted judgment to Trooper Lowe on Count I on the basis that she did not breach any duty owed to Myles as a matter of law. For the same reason, the court granted judgment in favor of the State on the negligence count and the negligent supervision and training count (Count III).

Turning to the state constitutional claims, the court ruled that Myles was not arrested or illegally detained without consent based upon the undisputed facts depicted in the video and granted judgment on Count V. Under Count VI, the court ruled that Trooper Lowe was not deliberately indifferent to an apparent serious medical need because Myles’ behavior did not manifest that he was seriously injured.

This timely appeal followed.

### **STANDARD OF REVIEW**

“Whether summary judgment was granted properly is a question of law.” *Lightolier, A Div. of Genlyte Thomas Grp., LLC v. Hoon*, 387 Md. 539, 551 (2005). “The standard of

review is *de novo* and we are concerned with whether the trial court was legally correct.” *Id.* (quotation marks and citation omitted). “We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 479 (2007) (quotation marks and citations omitted).

“For the purposes of summary judgment, a material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Romeka v. RadAmerica II, LLC*, 485 Md. 307, 330 (2023); *Carter v. Aramark Sports and Ent. Servs., Inc.*, 153 Md. App. 210, 224 (2003). While the moving party bears the burden of establishing the absence of a material fact, the non-moving party must produce admissible evidence to establish a genuine dispute of material fact. *Carter*, 153 Md. App. at 224-25. The party opposing summary judgment cannot simply rely on “conclusory statements, conjecture, or speculation[.]” *Id.* at 225 (quotation marks and citations omitted). Rather, the opposing party must “identify with particularity each material fact” that is in dispute and “identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute.” Md. Rule 2-501(b).

## DISCUSSION

### I.

#### **The Dash Camera Video**

As a threshold matter, we examine the propriety of the trial court’s reliance on the dash camera video in ruling on the motion for summary judgment. In *Scott v. Harris*, 550

U.S. at 376-77, the United States Supreme Court reversed the decision of a federal district court denying summary judgment in the context of a § 1983 action brought against a police officer. The lawsuit concerned actions taken by the officer during a high speed chase in which the plaintiff was the fleeing suspect. *Id.* at 374-75. Part of the evidence before the district court on summary judgment was “a videotape capturing the events in question” and there were “no allegations or indications that this videotape was doctored or altered in any way, nor any contention that what it depicts differs from what actually happened.” *Id.* at 378. The video directly contradicted “the version of the story” told by the plaintiff. *Id.* The Court reasoned that “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.* at 380.

Myles contends that in this case the dash camera video only captures one view of the scene that does not depict him and his movements for the majority of the recording, only captures audio near Trooper Lowe, and only captures about twenty-five minutes of the response to the traffic incident despite the Report reflecting that Trooper Lowe was present for fifty-eight minutes. For those reasons, he asserts that it cannot be the sole source of the “facts” for summary judgment purposes.

We are satisfied that the circuit court did not err by relying upon the dash camera video because it conclusively established certain facts that directly contradicted the allegations of the complaint. Myles did not submit an affidavit contravening the facts as

depicted in the video or supplementing those facts in any way.<sup>6</sup> The video establishes that, assuming that Myles was rendered unconscious in the accident, he regained consciousness while Trooper Lowe was present, conversed with her, provided information requested from her, was ambulatory, and responded “Okay” when told by her that he would need to go to the police barracks to wait for a ride home. The video shows that EMS personnel were present at the scene while Trooper Lowe was otherwise engaged with investigating the accident. The video does not capture whether Myles was evaluated by the EMS personnel, but it also does not show him asking Trooper Lowe for a medical evaluation or complaining of any injuries.

Because the dash camera video captured the relevant police response to the accident, the trial court also did not err by denying Myles’ request to delay ruling upon the State defendants’ motion to permit further discovery. Myles’ counsel’s affidavit of defense not available did not adequately allege how the discovery it sought could possibly contradict the dash camera video.

## II.

### **State Personnel Immunity**

Before turning to Myles’ claims against the State defendants, we consider whether Trooper Lowe is immune under the MTCA. As the Supreme Court of Maryland has explained:

The MTCA was enacted in 1981 as a waiver of the State’s sovereign immunity for tortious acts or omissions committed within the scope of the

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<sup>6</sup> Though Myles states in his brief that he has no “independent memories” while at the scene of the accident, he does not support this assertion with any reference to the record.

public duties of “state personnel,” and committed without malice or gross negligence. . . . “[S]tate personnel” are immune from suit and from liability in tort<sup>[7]</sup> for acts or omissions committed within the scope of their public duties and without malice or gross negligence, and when the State waives its immunity pursuant to the MTCA.

*Barbre v. Pope*, 402 Md. 157, 173-74 (2007) (internal citation omitted). “In other words, liability of the State and liability of individual State personnel are mutually exclusive. If the State is liable, the individual is immune; if the individual is liable, the State is immune.” *Newell v. Runnels*, 407 Md. 578, 635 (2009).

Clearly, Trooper Lowe is a public official acting within her law enforcement duties when she responds to the scene of a motor vehicle accident. The only issue in dispute is whether a reasonable factfinder could find that her acts or omissions at the scene of that accident were grossly negligent.<sup>8</sup> Gross negligence is “an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them.” *Barbre*, 402 Md. at 187 (cleaned up).

The circuit court ruled that Trooper Lowe did not act with gross negligence as a matter of law based upon the dash camera video. It emphasized that that dash camera video directly contravenes Myles’ allegations of gross negligence, which relied upon his having been unconscious the entire time Trooper Lowe was at the scene. It shows that Trooper

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<sup>7</sup> The tortious conduct covered by the MTCA includes both common law and state constitutional torts. *See Lee v. Cline*, 384 Md. 245, 266 (2004) (holding that “the immunity under the Maryland Tort Claims Act, if otherwise applicable, encompasses constitutional torts and intentional torts”).

<sup>8</sup> Myles did not allege that Trooper Lowe acted with malice.

Lowe asked Myles to arrange a ride home because King had been arrested and his car was not drivable and, upon learning that his father would not be able to pick him up for at least hour, directed him to wait for his ride at the police barracks.<sup>9</sup> We hold that the court did not err by ruling on this record that Trooper Lowe’s conduct did not amount to an intentional failure to perform any duty owed to Myles and, consequently, she is immune from civil liability. We thus are concerned only with whether the State is liable for Trooper Lowe’s acts or omissions, an issue we consider below.

### III.

#### False Arrest

“Article 26, like the Fourth Amendment of the United States Constitution, protects a person’s right to be free from unreasonable searches and seizures[,]” encompassing a claim for false arrest. *Rovin v. State*, \_\_ Md. \_\_, No. 19, Sept. Term, 2023, slip op. at 20-21 (filed Aug. 15, 2024) (emphasis and footnote omitted). The elements of such a claim are: “(1) a deprivation of the liberty of another; (2) without consent; and (3) without legal justification.” *Id.* at \_\_, slip op. at 26; *accord State v. Roshchin*, 446 Md. 128, 138 (2016).

Myles contends that the court erred by granting judgment in favor of the State on his claim for false arrest because, viewing the facts in the light most favorable to him, a reasonable juror could find that Trooper Lowe took custody of him without legal justification when she ordered him to go to the police barracks and that he merely acquiesced in that order when he replied, “Okay.” Considering that Trooper Lowe had

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<sup>9</sup> It is also noteworthy that it was after 2 a.m. on a rainy January night. It clearly would have been unwise for Trooper Lowe to leave Myles at the accident scene alone.

“interrogat[ed]” him about the marijuana found in the vehicle, Myles argues that a reasonable person in his position would not have believed he was free to object to that command.

To determine if an arrest has occurred, we analyze four factors: “(1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested.” *Bouldin v. State*, 276 Md. 511, 516 (1976). None of these factors were present based upon the record before the circuit court.

The dash camera video shows the interaction that led up to Myles being transported to the police barracks. The video unequivocally establishes that Trooper Lowe never had an intent to arrest Myles. She asked Myles to call someone to pick him up from the accident scene, demonstrating that she planned to allow him to leave. Only upon learning that Myles’ father would be coming from Charles County, which was at least an hour away from the accident scene, did she direct him to wait for his ride at the police barracks. By the time that conversation occurred, King already had been arrested. There was no evidence that Myles was being treated as a suspect relative to the accident or the marijuana found in the vehicle, and, in fact, he was not charged with any crimes.

Trooper Lowe also did not take any affirmative steps to seize or detain Myles and his behavior was inconsistent with an understanding that he was being arrested. The Supreme Court of Maryland’s decision in *Morton v. State*, 284 Md. 526 (1979), is

instructive.<sup>10</sup> In that case, a police officer ordered the defendant, who was a suspect in an armed robbery, to come with him because he might be “wanted for something” and “put [him] in a patrol car with another officer” while a search for the defendant’s belongings was conducted. *Id.* at 528. After finding his belongings, which included contraband, the police officer informed the defendant that he was under arrest. On appeal, the Court reasoned that it was “clear that the [defendant] was arrested when [the officer] removed him from the recreation center and placed him under guard in the police patrol car.” *Id.* at 530. It explained that the officer’s “manual seizure of the [defendant] and the subsequent restraint of his liberty plainly constituted an arrest, there being nothing to show that the [defendant] voluntarily consented to the restrictions placed upon his freedom by the arresting officer.” *Id.*

Here, in contrast, Trooper Lowe did not place her hands on Myles, did not handcuff him, and did not otherwise restrict his movement. She merely assigned a location where he would wait for a ride home. Further, Myles’ response of “Okay” to Trooper Lowe’s statement that he needed to wait at the police barrack was indicative of voluntary consent. Under the totality of the circumstances, Myles was not deprived of his liberty without

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<sup>10</sup> In this section of his brief and in a later section, Myles cites to two unreported opinions issued by this Court prior to July 1, 2023, in violation of Md. Rule 1-104(a), which provides that an unreported opinion may not be cited as precedent under any circumstances and only may be cited as persuasive authority if issued after that date and there are no reported decisions addressing the issue. Because Myles has not brought his authority within the ambit of this Rule, we decline to consider them.

consent and summary judgment properly was granted in favor of the State on Count V of the complaint.

#### IV.

##### **Failure to Protect**

Myles next contends that the circuit court erroneously applied the two-step test enunciated in *Farmer v. Brennan*, 511 U.S. 825, 837 (1994),<sup>11</sup> when it analyzed his failure to protect claim arising under Articles 24 and 26 of the Maryland Declaration of Rights, instead of the four-part test set out in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). The State responds that this “argument is irrelevant to a determination in this case” because Myles was not in state custody and, in any event, that Myles failed to meet his burden under either test. We agree with the State.

Myles’ claim for failure to protect is the state constitutional analog to a claim by a pretrial detainee for “deliberate indifference to a medical need” under the Fourteenth Amendment to the federal constitution *See Short v. Harman*, 87 F.4th 593, 611 (4th Cir. 2023) (setting out the elements of deliberate indifference claim). Under the test Myles asserts should have been applied, a pretrial detainee must satisfy four elements:

- (1) they had a medical condition or injury that posed a substantial risk of serious harm;
- (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed;
- (3) the defendant knew or should have known (a) that the detainee had that

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<sup>11</sup> Under *Farmer*, “[a]n officer is deliberately indifferent to a substantial risk of harm to a detainee when that officer ‘knows of and disregards’ the risk.” *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 302 (4th Cir. 2004) (quoting *Farmer*, 511 U.S. at 837). Thus, as pertinent, the plaintiff must show that the defendant “‘actually knew of and ignored a detainee’s serious need for medical care.’” *Id.* (emphasis in *Parrish*) (quoting *Young v. City of Mount Ranier*, 238 F.3d 567, 575-76 (4th Cir. 2001)).

condition and (b) that the defendant’s action or inaction posed an unjustifiably high risk of harm; and (4) as a result, the detainee was harmed.

*Id.*

The State contends that Myles failed to generate a dispute of material fact on most of the elements of the test. It points to the dash camera video, which does not evidence any injury to Myles or show him complaining of an injury or asking for medical attention. In his complaint, Myles alleged that the day after the accident, he was diagnosed and treated for a concussion and a spinal fracture. In opposition to summary judgment, however, Myles supplied no evidence to support that claim. He did attach the Report, which includes a radio transmission stating that the “passenger,” *i.e.*, Myles, was unconscious at some point. Assuming this to be true, Myles did not adduce any admissible evidence on summary judgment establishing that this amounted to a medical condition or injury that posed a substantial risk of serious harm. He may not rely upon a conclusory statement that “[a]ny loss of consciousness after a high-speed vehicle collision is inherently dangerous and requires immediate medical attention” to defeat a motion for summary judgment. Because the only evidence before the trial court showed that during Myles’ interactions with Trooper Lowe, he did not show any outward signs that he was suffering from a serious medical condition or injury *and* because he did not adduce that he actually was suffering from a serious injury, the trial court did not err by granting summary judgment in favor of the State on this claim.

Myles’ claim also fails for an independent reason. In order to state a claim for deliberate indifference to a medical need, Myles would need to show that he was being

detained at the time that Trooper Lowe intentionally, knowingly, or recklessly failed to obtain medical care for him.<sup>12</sup> For the reasons already discussed, Myles was neither detained nor in custody when he was transported to the police barracks.

## V.

### Special Relationship

Myles contends that the circuit court erred by granting summary judgment in favor of the State on the three negligence counts – negligence, gross negligence, and negligent training and supervision – because it failed to apprehend that Trooper Lowe owed Myles a heightened duty of care. The State responds that Trooper Lowe did not owe Myles a duty, heightened or otherwise, to protect him from harm or to seek medical care for him.

“In order to prevail on a claim of negligence in Maryland, a plaintiff must prove the existence of: (a) a duty owed by the defendant to the plaintiff, (b) a breach of that duty, and (c) injury proximately resulting from that breach.” *Barclay v. Briscoe*, 427 Md. 270, 292 (2012). “[T]he ‘duty’ owed by the police by virtue of their positions as officers is a duty to protect the public,” and there can be no civil liability in tort for actions or omissions absent the formation of a special relationship between an officer and a specific member of the public. *Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 628 (1986). A “special relationship” is created between a police officer and a member of the public if a “police officer

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<sup>12</sup> The Incident Notes in the Report state that another State Trooper advised that the passenger, *i.e.*, Myles, regained consciousness and “is ok.” In addition, another trooper advised that the passenger was being relayed to the barracks “to stand by for a ride.” These notes support the accuracy of the dash camera video and undermine the primary assertions in the complaint.

affirmatively acted to protect the specific victim or a specific group of individuals like the victim, thereby inducing the victim’s specific reliance upon the police protection.” *Id.* at 631.

According to Myles, Trooper Lowe formed a special relationship with him when she took him into custody. Because we already have held that Trooper Lowe did not place Myles under arrest or take him into custody when she arranged for him to be transported to the police barracks to wait for a ride home, she did not owe him a duty of care actionable in tort. The circuit court did not err by granting summary judgment in favor of the State on the negligence counts.

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