Circuit Court for Anne Arundel County
Case No. C-02-CV-15-002956

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1191

September Term, 2018

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MICHAEL H. REEVES, *ET AL*.

v.

KEVIN DAVIS, *ET AL*.

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Kehoe,
Nazarian,
Friedman,
JJ.

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Opinion by Kehoe, J.
Dissenting Opinion by Friedman, J.

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Filed: October 30, 2019

While conducting an investigation into a report of daytime burglaries, an Anne Arundel County police officer shot and killed Michael Reeves's dog, believing that the dog was attacking him. Reeves filed a civil action in the Circuit Court for Anne Arundel County against the police officer, Anne Arundel County, and the Anne Arundel County Chief of Police. Reeves alleged violations of Articles 24 and 26 of the Maryland Declaration of Rights, a "pattern or practice" claim pursuant to *Prince George's County v. Longtin*, 419 Md. 450 (2011) (hereinafter, the "*Longtin* claim"), civil conspiracy, gross negligence, and trespass to chattels. Prior to trial, the circuit court granted the County's motion to bifurcate the *Longtin* and civil conspiracy claims. After a trial on the other counts, the jury found that the police officer was grossly negligent, committed a trespass to chattel, and violated Articles 24 and 26 of the Declaration of Rights. The jury awarded Reeves $500,000 in economic damages and $750,000 in non-economic damages for gross negligence, $10,000 for trespass to chattel, and awarded no damages for either of the constitutional claims. The court reduced the award for gross negligence to $200,000 pursuant to the Local Government Tort Claims Act ("LGTCA"), Md. Code Courts and Judicial Proceedings ("CJP") Article § 5-303, and reduced the award for trespass to chattel to $7,500 pursuant to CJP § 11-110(b)(2).

After trial, the County filed a motion for summary judgment for the *Longtin* and civil conspriacy claims, arguing that CJP § 5-303 barred Reeves from any further monetary recovery. After a hearing, the court granted that motion.

Reeves has appealed from the court's grant of summary judgment on his *Longtin* and civil conspiracy claims. The County has filed a cross-appeal, asserting a variety of errors on the trial court's part. Collectively, the parties raise five issues, which we have rephrased and reordered:

> 1. Was the evidence legally sufficient to support the jury's finding of gross negligence?
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> 2. Was the evidence legally sufficient to support the jury's award of damages?
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> 3. Was it error when the trial court failed to apply the statutory cap on damages for tortious injuries to pets to the gross negligence claim?
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> 4. Was it error for the trial court to enter judgment in excess of the cap on damages mandated by the Local Government Tort Claims Act?
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> 5. Did the circuit court err in granting summary judgment in favor of the County on Reeves's *Longtin* and civil conspiracy claims?

We will affirm the judgment in part and vacate it in part, and we will remand to the circuit court with instructions consistent with this opinion.

## Background

On February 1, 2014, at around 4:00 p.m., Anne Arundel County Police Officer Rodney Price was investigating a spate of burglaries in a residential neighborhood of Glen Burnie. As part of his investigation, Officer Price was going door to door to gather information from residents. One of these stops included the home of Reeves, where he lived with his two sons, Michael Jr. and Timothy Reeves, and Reeves's Chesapeake Bay

Retriever, Vern.[1] As Officer Price approached the home, he had reason to believe it was occupied. A light inside the house was on, several windows were open, and the front door was open, but the screen door was closed. Officer Price climbed the front porch, knocked on the front door, and, when he did not get an answer, left the porch and proceeded to the driveway. Officer Price was standing in the front yard, writing in his notepad, when he heard the screen door open. As Officer Price looked up, he saw Vern coming towards him.

Officer Price was the only witness to the incident. According to Officer Price's version of events, he first saw Vern when he was about five feet away. At that point, Officer Price could discern only that Vern was a type of retriever. He testified that Vern was "growling and lunging toward me," showed his teeth and had his ears pointed back. He recalled that Vern had placed his front paws on Officer Price's left forearm, which he had raised to protect himself from Vern, and that after doing so, Vern's muzzle was two inches away from his face. At that point, Officer Price testified that he was in fear for his life. He took one step back, drew his firearm, and discharged two shots. Each shot hit Vern, causing him to back down and limp across the yard where he collapsed. Although Officer Price carried alternatives to his firearm that day, including a baton, a taser, and mace, he did not use or attempt to use them against Vern. Officer Price also testified that Vern never bit him, and that Vern left no cuts or scratches on his left forearm. In his testimony, Officer Price stated

[1] Mr. Reeves's home had not been burglarized, but his next-door neighbor's home had been.

that he had mud from Vern's paws all over his uniform, particularly on both shoulders and on his badge, as a result of Vern jumping on him.

After the incident, Officer Price called dispatch and reported what had happened. At the same time, Reeves appeared from inside the house. Officer Price told Reeves that Vern came at him and he had to shoot him. Reeves found Vern, curled up next to the fence, and attempted to render first aid. Shortly thereafter, Reeves's two sons exited the house and made their way into the front yard. Other police officers arrived at the scene, and when they did, Officer Price returned to his district headquarters. One of Reeves's sons took Vern to the veterinarian where he was pronounced dead.

Other evidence and testimony produced at trial differed from Officer Price's version of events. The testimony of Dr. Kevin Lahmers, recorded in an earlier deposition, was played for the jury. Dr. Lahmers is a veterinary pathologist at the Virginia–Maryland College of Veterinary Medicine, who performed the necropsy on Vern. From his examination of Vern, he concluded that one bullet entered Vern's side, in the ribs, and exited Vern's other side. He concluded that that bullet was fired "with the animal turned perpendicular to the gun," but at about a 20 to 30 degree angle from being exactly perpendicular. He also observed a second bullet wound which entered Vern's sternum and lodged itself near his rectum. Dr. Lahmers concluded that this bullet was fired while Vern was facing the gun. He could not determine which bullet was fired first. He also observed that Vern weighed roughly 75 pounds, and that, when standing, Vern would only reach to about the mid-abdomen of a human. On cross examination, he stated that both shots were

likely fatal. Dr. Lahmers also conceded that he is not a ballistics expert and so has "no knowledge about how bullets travel once they enter into bodies."

Additionally, in contrast to Officer Price's testimony, photographs of Officer Price were taken by the County Police Department's Internal Affairs Office after the incident depicted him without any mud on his upper uniform or badge, even when magnified up to 300 times. Photographs did show that Officer Price had mud and blood spattered on the pants of his uniform.

Then, Reeves testified. Reeves is a former Marine, who, before the incident, worked as a civilian contractor for the military, and was often deployed in the Middle East and Afghanistan to assist United States personnel. In that capacity, he could earn $1,200 per day, or more, depending on the circumstances. Since the incident, he testified that he has "not been able to make a decent living since this incident" and has moved to California.[2]

Reeves's testimony also focused on his relationship with Vern. He purchased Vern in 2009 for $3,000 and took a year off of work to train him. Vern's training regimen consisted of military-style search and rescue training that began at 5:00 a.m. and lasted until 5:00 p.m., every day. Reeves testified that it was his goal to begin a Chesapeake Bay Retriever breeding program beginning with Vern and another Chesapeake Bay Retriever.[3]

[2] Mr. Reeves testified that he did work on three separate occasions since the incident for an energy services company in College Park.

[3] Mr. Reeves purchased a female Chesapeake Bay Retriever a few months before the incident, and purchased several more male dogs of that breed after Vern was shot.

Reeves's two sons, Timothy and Michael Jr., also testified. Timothy's testimony focused on Vern's upbringing, and both testified about the incident itself and the effects it has had on Reeves.

We will discuss Reeves's and others' testimony in more detail, as it becomes pertinent, in our analysis.

**Pleadings and Trial**

On September 24, 2015, Reeves filed suit in a thirteen-count complaint against Anne Arundel County (the "County"), Anne Arundel County Police Chief Kevin Davis, and Officer Price in his individual capacity. The following counts (which we have reordered and rephrased) survived to the end of trial:

> 1. That the County violated Article 24 of the Maryland Declaration of Rights when Officer Price unlawfully shot and killed Vern, thus depriving Reeves of substantive due process;
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> 2. That the County violated Article 26 of the Maryland Declaration of Rights when Officer Price unlawfully seized Vern without legal justification or exigent circumstances;
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> 3. That the County was grossly negligent when Officer Price, acting in a wanton and reckless manor, shot and killed Vern;
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> 4. That Officer Price committed a trespass to chattel by shooting and killing Vern without legal justification;
>
> 5. That the County engaged in an unlawful custom, pattern or practice of unjustified, unreasonable, and unconstitutional and illegal seizures of people's pets by shooting and seriously injuring or killing those pets;

> 6. That the County committed civil conspiracy by engaging in an unlawful custom, pattern or practice of unjustified, unreasonable, and unconstitutional and illegal seizures of people's pets by shooting and seriously injuring or killing those pets.

As we have related, the trial court bifurcated the last two counts—the unlawful pattern or practice claim, or "*Longtin*" claim, and the civil conspiracy claim—before trial.

The trial began on May 4, 2017. Officer Price, Dr. Lahmers, Reeves, and Reeves's two sons testified. At the close of Reeves' case, the County moved for judgment pursuant to Md. Rule 2-519. Specifically, the County moved for judgment on the gross negligence, Article 24, and Article 26 claims. The County also asserted that there was no evidence of malice on Officer Price's part and so Reeves was not entitled to punitive damages. The County did not raise any arguments regarding damages for the gross negligence or constitutional claims.

The court denied the County's motion for judgment as to the Article 24 and Article 26 claims. It reserved on the gross negligence claim. Later, the court denied the County judgment on that claim and submitted it to the jury. Finally, the court granted the County's motion for judgment as to malice, finding that "there's no evidence that the defendant had either the evil motive, intent to injure, [or] the allure of fraud."

The County then presented its case, and, after both parties made closing arguments, the jury retired to deliberate. The court instructed the jury to return its verdict in the form of written findings. *See* Md. Rule 2-522(b)(2). In its verdict sheet, the jury:

(1) found that Officer Price violated the constitutional rights of Reeves by depriving him of his dog, by seizing the dog, and by interfering with the use and enjoyment of the dog;

(2) found that Officer Price did not act with ill will or improper motivation when he did so;

(3) awarded Reeves $0 for economic and non-economic damages "in connection with [Officer] Price's violation of [Reeves's] constitutional rights";

(4) found that Officer Price was grossly negligent;

(5) awarded Reeves $500,000 in economic damages and $750,000 in non-economic damages for gross negligence;

(6) found that Officer Price committed a trespass to chattel;

(7) awarded Reeves $10,000 for trespass to chattel; and

(8) found that Officer Price did not kill Vern "after seeing [Vern] in the act of attacking [Officer] Price."[4]

The court then reduced the award for gross negligence to $200,000 pursuant to the CJP § 5-303, and reduced the damage award for trespass to chattel to $7,500 pursuant to CJP § 11-110(b)(2). Thus, the court reduced the total damage award to $207,500.

Thereafter, the County filed a motion for judgment notwithstanding the verdict, a remittitur, and a new trial. The County argued that the evidence did not show proximate causation between Officer Price's actions and the harm suffered by Reeves, and that there

[4] Although Mr. Reeves's adult sons, Timothy Reeves and Michael Reeves, Jr., were named as plaintiffs, only Mr. Reeves's claims were submitted to the jury.

was not legally sufficient evidence to support the jury's verdicts for gross negligence and the damage awards. After a hearing, the court denied the County's post-trial motions.

Then, on April 6, 2018, the County filed a motion for summary judgment pursuant to Md. Rule 2-501 on the bifurcated *Longtin* and civil conspiracy claims. The County argued that the court should enter judgment in its favor because (1) Reeves did not show any evidence of a widespread and flagrant practice by the Anne Arundel County Police Department of unlawfully shooting dogs, and so there was no genuine dispute of material fact; (2) Reeves was already awarded the full amount of damages recoverable by law, and so there was nothing more he could recover; (3) the jury determined that no damages were associated the underlying constitutional violations; and (4) no cause of action exists for "civil conspiracy."[5]

Reeves filed an opposition to the County's motion, arguing that (1) there was evidence to support the bifurcated constitutional claims, and so there was a dispute of material fact; (2) Maryland recognizes a claim for civil conspiracy as a separate tort; (3) he is entitled to nominal damages for the constitutional claims; and (4) because there was a full recovery for the claims submitted to the jury, the remaining claims are not subject to summary judgment.

[5] Before it filed the motion for summary judgment, the County filed an appeal of the jury's verdicts and the court's reduction of damages. On December 14, 2017, we dismissed that appeal as untimely pursuant to Md. Rule 8-602(a)(1). *See Kevin Davis v. Michael Reeves*, Case No. 1650, Sept. 2017 term.

On May 14, 2018, a hearing on the motion for summary judgment was held. In July 2018, in a memorandum opinion, the court granted summary judgment in favor of the County.[6] We will discuss the court's opinion in more detail later in this opinion.

Reeves appealed the court's grant of summary judgment as to the *Longtin* and civil conspiracy claims. The County appeals the court's denial of its JNOV motion, asserting that there was insufficient evidence to support a finding of gross negligence and insufficient evidence to support the jury's award for damages. We will review the issues raised by the County first.

**Standard of Review**

A motion for judgment notwithstanding the verdict ("JNOV") "'tests the legal sufficiency of the evidence' and 'is reviewed under the same standard as a judgment granted on motion during trial.'" *Barksdale v. Wilkowsky*, 192 Md. App. 366, 401 (2010) (quoting *Mahler v. Johns Hopkins Hosp.*, 170 Md. App. 293, 317 (2006). "In order to survive a motion for judgment (and JNOV), a plaintiff has the burden of producing sufficient evidence to send the case to a jury for a resolution of fact." *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 176 (2003).

[6] Although the trial and post-trial motions were presided over by Honorable Mark W. Crooks, the County's JNOV motion was presided over by the Honorable Cathleen M. Vitale.

In reviewing a motion for judgment notwithstanding the verdict, we "assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made. *Orwick v. Moldawer*, 150 Md. App. 528, 531 (2002) (citing *Nissan Motor Co. Ltd. v. Nave*, 129 Md. App. 90, 116–17 (1999)). In *Giant Food*, we observed:

> If the record discloses any legally relevant and competent evidence, however slight, from which the jury could rationally find as it did, we must affirm the denial of the motion. If the evidence, however, does not rise above speculation, hypothesis, and conjecture, and does not lead to the jury's conclusion with reasonable certainty, then the denial of the JNOV was error. Nevertheless, only where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the plaintiff, does the issue in question become one of law for the court and not of fact for the jury.

152 Md. App. at 177-78 (cleaned up).

**Analysis**

1. Gross Negligence

The County makes three arguments against the jury's verdict for gross negligence. First, it argues that the evidence was legally insufficient to support the jury's verdict for gross negligence. Specifically, the County asserts that Officer Price can only be found liable for gross negligence if he intentionally inflicted injury on Reeves, but that the evidence shows that Officer Price intended only to shoot Vern, and not to harm Reeves in any way. Thus, according to the County, the "intent to injure" requirement of gross negligence was not met. Second, the County distinguishes this case from *Brooks v. Jenkins*, 220 Md. App. 444 (2014), and argues that evidence that a police officer shot a dog is not

enough to generate a question of gross negligence for the jury. Finally, the County cites to *Beall v. Holloway-Johnson*, 446 Md. 48 (2016) for the proposition that gross negligence is an unintentional tort, and because Officer Price intentionally shot Vern, he cannot be found liable for gross negligence. The trial court did not find these arguments to be persuasive, and neither do we.

A.

Gross negligence is:

> [A]n intentional failure to perform a manifest duty in a 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. Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.

*Newell v. Runnels*, 407 Md. 578, 636–38 (2009) (quoting *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 635 (1985); *Romanesk v. Rose*, 248 Md. 420, 423 (1968)). "Whether or not gross negligence exists necessarily depends on the facts and circumstances in each case, and is usually a question for the jury and is a question of law only when reasonable people could not differ as to the rational conclusion to be reached." *Cooper v. Rodriguez*, 443 Md. 680, 708–09 (2015) (cleaned up).

This Court has recently affirmed a verdict of gross negligence against a police officer for shooting a dog. In *Brooks v. Jenkins*, 220 Md. App. 444 (2014), Frederick County Sheriff's Deputy Brooks entered the property of Roger and Sandra Jenkins to serve a warrant on the Jenkins' son. 220 Md. App. at 449–50. Jenkins, seeking to cooperate, moved

the family dog, Brandi (a chocolate Labrador Retriever) to a kennel outside. *Id*. at 450. Brandi, who was not on a leash, escaped from Jenkins's control, ran around the house, and approached Deputy Brooks. *Id*. According to Deputy Brooks, Brandi was barking loudly and moving towards him "in . . . a pretty determined pace." *Id*. at 451. When Brandi was about three to five feet away from Deputy Brooks, he shot Brandi, severely wounding her. *Id*. The shooting was recorded via Deputy Brooks' dash camera. *Id*. After trial, a jury returned a verdict finding that Deputy Brooks was grossly negligent in shooting Brandi, but without actual malice. *Id*. at 453.

On appeal, this Court affirmed the jury's verdict. In doing so, we observed:

> Not only was there no evidence that Brandi was vicious or threatening, but counsel for Deputy Brooks conceded in opening statement that "there's not going to be any evidence [in] this case that . . . Brandi was a vicious animal in any way. The evidence is going to be that Deputy Brooks didn't know;"
>
> The videotape showed Brandi wagging her tail as she approached the Deputy, and that she did not approach him at an inordinate speed or in a crouched position; and
>
> Rather than using some lesser form of force or deterrent, the videotape showed Deputy Brooks aiming his gun directly at Brandi's chest, and his bullet created a "small wound . . . behind her shoulder, and a large ... gaping wound . . . in front of her leg, . . . in her chest area . . . where the tissues were . . . destroyed."

220 Md. App. at 462. This evidence, we concluded, "sufficed to support the jury's finding that the Deputy overreacted to the potential threat, responded with excessive force, and acted with reckless indifference, and the court was correct to allow the jury to make that decision." *Id*.

B.

We conclude, as we did in *Brooks*, that there was legally sufficient evidence from which the jury could find that Officer Price was grossly negligent in shooting Vern.

Around 4:00 p.m. on a Saturday afternoon, Officer Price discharged his weapon, twice, while in a residential neighborhood. Although lawfully on Reeves's property, Officer Price had no reason to suspect that he was in any danger or there was otherwise criminal activity afoot. Additionally, Officer Price testified that he was aware that there could be people in the home because the lights were on and the windows and front door were open. Both bullets hit Vern. One remained lodged in Vern while the other bullet was later found by Timothy Reeves on the ground next to the garage.

Officer Price testified that he feared for his life because Vern was barking, "lunged" at him, and displayed his teeth, and that, as a result of Vern's aggressive nature, Officer Price had to hold him off with his left arm.

Clearly, the jury did not find Officer Price's testimony credible. On the verdict sheet, the jury explicitly found that Vern was not attacking Officer Price at the time of the incident. The jury was within its right to rely, instead, on the combined testimony of Dr. Lahmers, Reeves, and his two sons for its verdict. In his deposition, which was played for the jury, Dr. Lahmers concluded that, based on the necropsy he conducted on Vern, one bullet struck Vern while Vern was turned away from the firearm. Reeves and his sons testified that Vern was gentle and affectionate, got along with their neighbors, their neighbors' children, and their neighbors' pets. Additionally, Reeves testified at length

about the training he conducted with Vern to ensure he was well-behaved. There was no testimony that Vern had problem encounters with others, including police officers, or that he was otherwise vicious.

There was also evidence presented that Officer Price had alternatives other than deadly force. Specifically, he carried a baton, a taser, and pepper spray which could have been used against Vern. Further, his testimony that he had no opportunity to retreat was vigorously attacked on cross-examination.

In its brief, the County highlights a number of distinctions between this case and *Brooks* to support its argument that the evidence was insufficient to support a finding of gross negligence. Specifically, the County argues that "in *Brooks* the Court found that *specific facts* were enough to draw an inference of gross negligence for a jury to consider [which] included no evidence that the dog was vicious or threatening at the time of the incident and a videotape of the dog wagging its tail and approaching the officer slowly prior to the officers shooting." (Emphasis in original.) The County has a point—the evidence of gross negligence in the present case is not as strong as it was in *Brooks.* Nevertheless, as we have just made clear, there were "specific facts" from which the jury could find that Officer Price was grossly negligent.

The County also argues that the jury's finding as to gross negligence was flawed because no one else was present during the shooting. According to the County, "that Officer Price's bullets could have hypothetically struck a child playing outside even though no one was present cannot be enough evidence to infer that his action was so utterly

indifferent to Reeves or others." This argument is unpersuasive. As Officer Price himself testified, he was looking down, writing in his notepad at the time Vern pushed open the door and charged at him. Then, Vern was upon Officer Price and the latter discharged his weapon. This incident occurred within the span of a few seconds. Thus, by Officer Price's own testimony, he had little, if any, time to scan the area for bystanders who could have been harmed by his discharging his firearm.

In conclusion, the jury had two different versions of the events before it. It had Officer Price's version, and, in stark contrast, the cumulative evidence of Reeves, his sons, and Dr. Lahmers. The jury chose the latter, and we will not disturb that decision absent some other error. *See Stracke v. Estate of Butler*, ___ Md. ___, 2019 WL 3852542, at *11 (filed August 16, 2019) ("The conflict was so dramatic and pervasive that the jury could not rationally conflate the two versions. It had to believe one or the other, and, on proper instructions from the court, it obviously chose to believe the version presented by the plaintiffs.") (Wilner, J., dissenting).

2. Evidence as to damages

The County next argues that the evidence was legally insufficient to support the jury's awards of a total of $1,300,000 to compensate Reeves for his economic and non-economic losses stemming from Vern's death. These contentions are not preserved for appellate review.

Maryland Rule 2-532 provides, in pertinent part:

> When Permitted. In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.

Thus, the County was required to specifically raise this issue in a motion for judgment pursuant to Md. Rule 2–519[7] at the close of all evidence. *See Fearnow v. Chesapeake & Potomac Telephone Co.*, 104 Md. App. 1, 27–28 (1995), *aff'd in part and rev'd in part*, 342 Md. 363 (1996); *Larche v. Car Wholesalers, Inc.*, 80 Md. App. 322, 328 (1989). Although the County made such a motion for judgment at the close of the plaintiff's case, it did not argue that the evidence was legally insufficient to support an award for either economic or non-economic damages. For this reason, the County has not preserved this issue for appeal.[8]

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[7] Rule 2-519 provides:

> (a) Generally. A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.

[8] Assuming, *arguendo*, that this issue was preserved, we would set aside the award of $500,000 in economic damages. The basis for this award was that the emotional trauma caused by the circumstances of Vern's death caused Reeves to be unable to work as a civilian contractor for the United States military. Although Reeves testified that he earned $1,200 per day when he performed such work, there was a complete dearth of evidence as to how often he had done so in the years before the shooting, or how often he would have

3. CJP § 11-110

Next, the County argues that CJP § 11-110 caps the amount of *total* damages Reeves may be awarded to $7,500. That statute provides:

> (a)(1) In this section the following words have the meanings indicated.
>
> (2) "Compensatory damages" means:
>
> (i) In the case of the death of a pet, the fair market value of the pet before death and the reasonable and necessary cost of veterinary care; and
>
> (ii) In the case of an injury to a pet, the reasonable and necessary cost of veterinary care.
>
> (3)(i) "Pet" means a domesticated animal.
>
> (ii) "Pet" does not include livestock.
>
> (b)(1) A person who tortiously causes an injury to or death of a pet while acting individually or through an animal under the person's ownership,

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done so in the period after the shooting and the time of trial. The jury's award as to economic damages was entirely speculative.

In contrast, there was legally sufficient evidence, in the form of the testimony of Reeves and his two sons, to support an award of $750,000 in non-economic damages. Because his claimed injuries were emotional, and not physical, Reeves was obligated to provide evidence of "objective manifestations" of emotional injury. *Beynon v. Montgomery Cablevision Ltd. P'ship*, 351 Md. 460, 463 (1998). The evidence presented by him met that threshold. *See Hunt v. Mercy Medical Center*, 121 Md. App. 516, 234–25 (1998) (reinstating a jury award for non-economic damages based on evidence similar to that presented to the jury in the present case).

Accordingly, even if we looked past the County's preservation problems, our recourse would be to remand to the circuit court with instructions to strike the jury's award for economic damages. That still leaves the $750,000 award for noneconomic damages. That amount, even when reduced by the LGTCA, is more than enough to make up for any loss in economic damages.

> direction, or control is liable to the owner of the pet for compensatory damages.
>
> (2) The damages awarded under paragraph (1) of this subsection may not exceed [$7,500].[9]

CJP § 11-110. According to the County, the trial court erred when it did not apply this cap to the total damage award, which included the award for gross negligence.

We disagree. This same issue was presented to this Court in *Brooks*, 220 Md. App. 444 (2014). To resolve it, we looked at the legislative history of CJP § 11-110, as well as the consequences of the County's interpretation of it, and we concluded that CJP § 11-110:

> Does not, and cannot, alter the fundamental nature of the underlying (in this case, constitutional) tort. Nor does it limit a victim's overall recovery for a tort that includes, but isn't limited to, damage to a pet for vet bills up to $7,500. A far-fetched example illustrates the point. Suppose that someone distractedly (and thus negligently) drove his car into the wrong driveway, crashed into his next door neighbor's garage, smashed the garage door and the car just inside it, and injured the neighbor's rabbit, who lived in a hutch along the garage wall. The Deputy's theory of CJ § 11–110 would limit the neighbor's recovery to the bunny's vet bill and preclude any recovery for the much greater damage to the neighbor's car or house. That cannot be the result the General Assembly intended for that hypothetical or for this case.
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> * * *

[9] At the time this cause of action accrued, the statutory limit was $7,500. That cap has since been increased to $10,000. *See* Acts 2017, c. 413, § 1, eff. Oct. 1, 2017.

> Because pets are property, CJ § 11–110 defines their property value, but it cannot rationally be read to cabin a grossly negligent official's total liability based on the fortuity that he shot a pet rather than something inanimate.[10]

220 Md. App. at 469–71.

From our perspective, *Brooks* is controlling. The County, nevertheless, asks that we distinguish *Brooks* from this case because the jury did not award Reeves any damages for the County's constitutional violations, whereas the jury in *Brooks* did. However, as the passage from *Brooks* that we have quoted in the previous paragraph makes clear, *Brooks* stands for the proposition that CJP § 11-110 does not bar recovery for non-economic damages, at least when the tortfeasor has been grossly negligent. In asking us to "distinguish" *Brooks*, the County, in effect, is asking us to overrule it. We decline to do so.

4. The LGTA Damage Cap

The County next asserts that the trial court erred when it reduced the damage award to $207,500 and not $200,000. At the time that Mr. Reeves's causes of action against the County and the other defendants accrued, CJP § 5-303 provided, in pertinent part:

> (a)(1) [T]he liability of a local government may not exceed $200,000 per an individual claim, and $500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions. . . .[11]

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[10] The Court limited its holding to the Jenkins' ability to recover for the constitutional tort claims, and so did not address whether CJP § 11-110 reached other circumstances, "such as whether it reasonably would be construed to cover veterinary malpractice cases, product liability cases such as *Ferrell* [*v. Benson*, 352 Md. 2 (1998)], or other similar situations." *Brooks,* 220 Md. App. at 471. None of those circumstances are present here.

[11] At the time Mr. Reeve's claim arose, CJP § 5-303(a) had caps of $200,000 per individual claim, and $500,000 per total claims. The statute has since been amended to increase those caps to $400,000 and $800,000, respectively. *See* Acts 2015, c. 131, § 1,

The County asserts that § 5-303(a) caps Reeves's total recovery at $200,000. Reeves concedes that the County is correct.

Although a party's concession of a legal issue is not binding on an appellate court, *see, e.g., Greenstate v. State*, 292 Md. 652, 667 (2008), we agree with the County's interpretation of the statute and will briefly explain why.

How § 5-303 applies in the present case depends upon the meaning of the term "claim" as it is used in the statute. It is clear that in interpreting the LGTA, courts "courts should look to definitions in the insurance industry." *Leake v. Johnson*, 204 Md. App. 387, 413 (2012) (citing *Board of County Commissions of Saint Mary's County v. Marcas, LLC*, 415 Md. 678, 687 (2010) and *Surratt v. Prince George's County*, 320 Md. 439 (1990)). As we explained in *Leake*, courts "construe insurance policies with 'each claim' or 'per person' liability limits to include all claims for the injury to one person, including consequential damages and derivative damages to other persons as a result of the injury." 204 Md. App. at 413.

In the present case, Reeves asserted several causes of action to the jury: gross negligence, violations of constitutional rights, and trespass to chattels, but all of these arose out the same set of facts, that is, Officer Price's shooting of Vern. For purposes of the

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eff. Oct. 1, 2015. Section 2 of chapter 131 provides that the amendment to § 3-503 the act "may not be applied or interpreted to have any effect on . . . any cause of action arising before the effective date of this Act," which was October 1, 2015. Vern was shot on February 1, 2014.

damage cap in § 5-303(a), all injuries suffered by him constitute Reeves's claim and his total recovery on that claim is limited to $200,000. For this reason, we will vacate the damage award and remand the case to the circuit court with instructions to reduce the total award to $200,000.

5.

Finally, we reach Reeves's argument that the circuit court erred in granting the County's motion for summary judgment as to the *Longtin* claim and civil conspiracy claim.

In *Prince George's County v. Longtin*, 419 Md. 450 (2011), the Court of Appeals recognized, for the first time in Maryland, a plaintiff's ability to bring a "pattern or practice" claim against a local government for implementing unconstitutional policies. *Id.* at490. The Court observed that the "pattern or practice" claim arises from *Monell v. Department of Social Services*, 436 U.S. 658 (1978), in which the Supreme Court held:

> Local governing bodies, therefore, can be sued directly under [42 U.S.C.A.] § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers [or for] constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

419 Md. at 492 (quoting *Monell*, 436 U.S. at 690–91). *See also DiPino v. Davis*, 354 Md. 18, 51–52 (1999) (holding that "local government entities do, indeed, have *respondeat superior* liability for civil damages resulting from State Constitutional violations committed by their agents and employees within the scope of the employment.").

Longtin's "pattern or practice" claim arose from a series of events in which he was arrested, interrogated, and held in jail despite the existence of exculpatory evidence. 419 Md. at 460–62. The Court concluded that not only did Longtin produce evidence of unconstitutional actions committed against him, but that he also "introduced multitudinous evidence that his experience was not an isolated incident." *Id*. at 497. This evidence included the common use of sleep deprivation by police in interrogations, lengthy interrogations of other defendants, and "an official police training manual urging constitutionally questionable actions with respect to the conduct of interrogations, *Miranda* warnings, and the right to counsel." *Id*. at 497.

In his complaint, Reeves alleged that the County engaged in an unlawful custom, pattern or practice of unjustified, unreasonable, and unconstitutional and illegal seizures of people's pets by shooting and seriously injuring or killing those pets, and that this unlawful pattern or practice is the result of the County's failure to properly train its police officers with regard to the proper use of force when dealing with domestic pets. Reeves also alleged that the unconstitutional patterns and practices of the County employees constituted a civil conspiracy. Those claims were bifurcated on motion of the County, over Reeves's objection. Discovery on the *Longtin* claim began after the first trial, and, after discovery ended, the County filed a motion for summary judgment.

The circuit court, in a memorandum opinion, granted the County's motion for summary judgment for three reasons. First, the court concluded that the doctrine of collateral estoppel applied to preclude Reeves's *Longtin* claim. Citing *Taylor v. Sturgill*,

553 U.S. 880, 892 (2008), the court observed that "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment is barred." The court noted that Reeves's claims arose, in part, out of Article 24, and found that because "the issue of damages resulting from an Article 24 violation was an issue of fact actually litigated and resolved in a valid court determination essential to the prior judgment[,] . . . the issue of damages under Article 24 cannot be re-litigated through a separate claim."

Second, the court granted summary judgment on the basis that no additional damages could be awarded to Reeves by virtue of the cap provided for in the LGTCA. The court, relying on *Beall v. Holloway Johnson*, 446 Md. 48, 71 (2016), observed that the LGTCA entitles plaintiffs to collect up to $200,000 for an individual claim where there is no finding of actual malice. The court found that because Reeves's claims arose out of a single cause of action—the death of his dog—and that the jury had already awarded the fullest amount possible under the LGTCA, that any further damages awarded to Reeves would violate the LGTA, even if those damages were nominal. To rule otherwise, the court reasoned, would be to violate the "one wrong, one recovery" rule of *Beall v. Holloway-Johnson*, 446 Md. 48, 71 (2016).

Finally, as to the civil conspiracy count, the court concluded that "civil conspiracy[ ] is not recognized in Maryland as a separate cause of action." *See Manikhi v. Mass Transit Admin.*, 360 Md. 333, 360 n. 6 (2000).

According to Reeves, the court erred in granting summary judgment in favor of the County on the *Longtin* claim. Reeves contends that relying on collateral estoppel was in error because (1) it was not raised by the County and (2) the verdict on the Article 24 claim was not a final judgment and therefore not appealable. Then, Reeves argues that the court's second basis for granting the motion—that the jury had already awarded Reeves the amount of damages allowable by statute—was in error because he was entitled to nominal damages, *see Mason v. Wrightson*, 205 Md. 481, 488–89 (1954); *Brown v. Smith*, 173 Md. App. 459, 481 (2007); *Amato v. City of Saratoga Springs, N.Y.*, 170 F.3d 311, 317–21 (2d Cir. 1999), and that because the County made clear its intention to challenge the jury's verdict by filing its (premature) appeal, it was possible that, on appeal, the damage award might be reduced to allow the jury to award additional damages.

The County argues, first, that Reeves is not entitled to damages for any additional constitutional claim because the jury already found that Reeves was not harmed by the Article 24 and Article 26 violations when it awarded him $0 for each claim. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986). Second, the County asserts that no evidence was produced, after discovery, demonstrating a widespread pattern or practice of unlawful behavior by the County, and that, any police-involved shootings of dogs make up only 0.0000025% of the 400,000 to 500,000 calls the Anne Arundel County Police Department receives each year.

Reeves has a point: the circuit court's reliance on the doctrine of collateral estoppel was premature because there was no final judgment when the court granted the County's motion for summary judgment. But the circuit court's underlying logic has been validated by the outcome of this appeal. As we have explained, we will vacate the damages award in this case and remand it to the circuit court for entry of a judgment in Reeves's favor in the amount of $200,000, the maximum recovery permitted by the version of CJP § 5-303 that is applicable to this case. However, the LGTA's limitation on damages bars Reeves from any additional monetary recovery.

In his brief, Reeves cites to *Mason v. Wrightson*, 205 Md. 481, 489 (1954), for the proposition that "[i]t is well settled that every injury to the rights of another imports damages, and if no other damage is established, the party injured is at least entitled to a verdict for nominal damages," and from there, argues that he may be entitled to nominal damages for the *Longtin* claim. In *Mason*, the Court of Appeals ordered that damages for the plaintiff be entered for one cent. 205 Md. at 489. But, in this case, the addition of even one cent to the damages awarded to Reeves would surpass CJP § 5-303's limit on damages. Thus, while we agree the principle in *Mason* that plaintiffs are entitled to nominal damages when liability is proven, we conclude that an additional damage award, even one cent, is, by law, prohibited here in light of the fact that Reeves has already been awarded $200,000.

Our decision on this issue might be different if, in his complaint, Reeves had asked for a remedy other than damages, such as injunctive or declaratory relief. But he did not. Thus, because Reeves has already been awarded the full amount of damages allowable by statute, there is nothing remaining for him to recover from the *Longtin* claim or the civil conspiracy claim. Allowing those claims to proceed to trial would be an exercise in futility.[12]

**Conclusion**

We hold that there was legally sufficient evidence to support the jury's verdict for gross negligence and that the County has waived its argument that there was insufficient evidence to support an award of damages. We do not accept the County's argument that CJP § 11-110 limits the total damages available to Mr. Reeves for all claims to $7,500. Additionally, we affirm the circuit court's grant of summary judgment in favor of the County as to Reeves's *Longtin* and civil conspiracy claims.

[12] At oral argument, Mr. Reeves raised another argument for pursuing the *Longtin* claim, in that doing so could expose wrongdoing by the County and serve an important role for County decision-makers to remedy that wrongdoing. This argument is unavailing.

Anne Arundel County Police Chief Kevin Davis was deposed during discovery for the *Longtin* claim. In that deposition, Chief Davis stated that one of his responsibilities as chief of police was the training curriculum for new officers. Chief Davis testified that, as a result of the incident at issue in this case, he "eventually introduced some additional training with officers and their interactions with domestic pets, particularly dogs." Thus, it appears that Reeves's other stated purpose has been accomplished.

However, we agree with the parties that the total damage award should have been capped at $200,000 pursuant to CJP § 5-303. Therefore, we will vacate the judgment and remand the case to the circuit court with instructions for it to enter judgment in Mr. Reeeves's favor in the amount of $200,000.

**THE JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED IN PART AND VACATED IN PART. THIS CASE IS REMANDED FOR ENTRY OF A JUDGMENT CONSISTENT WITH THIS OPINION.**

**COSTS TO BE APPORTIONED AS FOLLOWS: 80% TO BE PAID BY ANNE ARUNDEL COUNTY AND 20% TO BE PAID BY APPELLANT/CROSS-APPELLEE.**

Circuit Court for Anne Arundel County
Case No. C-02-CV-15-002956

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1191

September Term, 2018

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MICHAEL H. REEVES, *ET AL.*

v.

KEVIN DAVIS, *ET AL.*

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Kehoe,
Nazarian,
Friedman,

JJ.

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Dissenting Opinion by Friedman, J.

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Filed:

I have three principal and at least two subsidiary disagreements with my colleagues in the majority. As a result, I must respectfully dissent.

**I.**

Maryland tort law is clear that for each injury there can be one and only one recovery. *Beall v. Holloway-Johnson*, 446 Md. 48, 70-72 (2016); *see also Francis v. Johnson*, 219 Md. App. 531, 560-61 (2014) ("Maryland appellate courts have made clear that there can be only one recovery of damages for one wrong or injury."). Mr. Reeves, the plaintiff in this case, suffered two injuries: (1) the destruction of his dog, Vern; and (2) the denial of his constitutional rights.[1] The jury assigned no value to the denial of Mr. Reeves'

[1] I agree with my colleagues in the majority that we should affirm the trial court's grant of summary judgment for Anne Arundel County on Reeves' so called *Longtin* "pattern or practice claim." Slip op. at 27. I, however, arrive at that result along a different path. My colleagues affirm because once they have affirmed the $200,000 award for the gross negligence claim, there is no more room under the cap created by the Local Government Tort Claims Act (LGTCA), MD. CODE, COURTS AND JUDICIAL PROCEEDINGS ("CJ") § 5-303. That rationale obviously doesn't work for me, as I would not affirm the $200,000 award for gross negligence. *See infra* note 2. I would, instead, rest this determination on the fact that Reeves failed to provide sufficient evidence to sustain a *Longtin* claim. Reeves alleged that the County engaged in a "pattern or practice" of denying dog owners' their constitutional rights. Slip op. at 23. To support this claim, Reeves offered evidence that some number of dogs have been killed by officers in the line of duty. Without more to demonstrate that the police have erroneously killed some number of dogs and that training would have fixed this, Reeves presented "mere allegations of conclusory assertions," which are insufficient to avoid summary judgment. *Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc.*, 190 Md. App. 438, 451 (2010); *Danielewicz v. Arnold*, 137 Md. App. 601, 612-13 (2001) (noting that a grant of summary judgment is inappropriate if there is "evidence on which the jury could reasonably find for the plaintiff"). As such, partial summary judgment as to the *Longtin* claim was appropriate.

constitutional rights. The jury did, however, assign a value to the destruction of Mr. Reeves' dog. Therefore, the injury to the dog is the only injury upon which Mr. Reeves can recover.

For reasons that I will discuss in Section II of this dissent, the damages for the destruction of a dog are capped at $7,500. *See* CJ § 11-110. Calling Mr. Reeves' claims by different names—trespass to chattel, negligence, gross negligence,[2] or even an intentional tort, slip op. at 6-7,—doesn't change the analysis: there is still just one injury. *Beall*, 446 Md. at 72 (noting that for separate damages to be awarded, injuries must have arisen from "separate, unique transactions; otherwise, the multiple 'claims' are essentially different legal theories premised on a single set of facts").

[2] It is worth noting here that I also disagree with the majority that Reeves made out a *prima facie* case for gross negligence on the part of Anne Arundel County. Slip op. at 14. The majority's opinion is, in my view, inconsistent with *Stracke v. Estate of Butler*, in which the Court of Appeals recently held that "[g]ross negligence is not just big negligence." 465 Md. 407, 421 (2019). For a claim of gross negligence to procced, there must be sufficient evidence to establish that the defendant acted "intentionally or [was] so utterly indifferent to the rights of others that [they] act[ed] as if such rights did not exist." *Id.* Further, "only conduct that is of extraordinary or outrageous character will be sufficient to imply this state of mind." *Id.* Officer Price's actions did not rise to the level of gross negligence and I don't think there is evidence to support a finding that his state of mind was such to satisfy a claim for gross negligence. *Beall*, 446 Md. at 64 (noting that a claim for gross negligence sets the "evidentiary hurdle at a higher elevation"); *see Richardson v. McGriff*, 361 Md. 437, 452 (2000) (noting that a police officer's actions should not be evaluated with the benefit of 20/20 hindsight, nor should they be measured against what other actions the officer could have taken instead) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). And, even if I were to agree with the majority on the gross negligence claim, the one recovery rule and the CJ § 11-110 cap prevent any additional damages for the dog's death.

**II.**

In my mind, the central question of this case is one of statutory interpretation: what did the legislature mean when it adopted § 11-110 of the Courts and Judicial Proceedings Article?

§ 11-110 of the Courts and Judicial Proceedings Article reads, in full:

> (a) *Definitions*. –
>
> (1) In this section the following words have the meanings indicated.
>
> (2) "Compensatory damages" means:
>
> (i) In the case of the death of a pet, the fair market value of the pet before death and the reasonable and necessary cost of veterinary care; and
>
> (ii) In the case of an injury to a pet, the reasonable and necessary cost of veterinary care.
>
> (3) (i) "Pet" means a domesticated animal.
>
> (ii) "Pet" does not include livestock.
>
> (b) *Measure of damages*. –
>
> (1) A person who tortiously causes an injury to or death of a pet while acting individually or through an animal under the person's ownership, direction, or control is liable to the owner of the pet for compensatory damages.
>
> (2) The damages awarded under paragraph (1) of this subsection may not exceed $ [7,500].[3]

I begin by noting my understanding that tort damages come in only two flavors: compensatory damages, which are intended to reimburse the plaintiff for his or her loss,

[3] As noted by the majority, the cap under CJ § 11-110 has been increased to $10,000. Slip op. at 19 n. 9.

*i.e.* to make the plaintiff whole again; and punitive or exemplary damages, which are intended to "punish" the "most heinous … tortfeasors." *Beall*, 446 Md. at 70-71. There are no other kinds of damages. *Id.*; *see also Exxon Corp. v. Yarema*, 69 Md. App. 124, 137-38 (discussing punitive and compensatory damages in tort law). Section 11-110 of the Courts and Judicial Proceedings Article limits the compensatory damages for injuries to pets to two subcategories: loss replacement value and veterinary care. CJ § 11-110 (a)(2)(i)-(ii). The amount of compensatory damages, whether it be for replacement or veterinary care, is capped at $7,500. *See Beall*, 446 Md. at 70 (noting that compensatory damages are "not intended to grant the plaintiff a windfall as a result of the defendant's tortious conduct"). To me, this section very clearly precludes all other sorts of compensatory damages, including but not limited to, loss of breeding opportunity, owner's pain and suffering, and the animal's pain and suffering.[4] Thus, Mr. Reeves is entitled to a complete compensatory damages award of $7,500.

**III.**

The majority, I take it, thinks that my conclusion is inconsistent with our recent decision in *Brooks v. Jenkins*, 220 Md. App. 444 (2014). While I am hesitant to argue with Judge Nazarian about the meaning of his recent opinion, I think the majority, which he has joined, misinterprets it.

*Brooks* stated, as the majority notes:

[4] For what it's worth, I do read the statute as allowing plaintiffs to claim and recover punitive damages for injury to pets.

> All [CJ § 11-110] means, though, is that the General Assembly limited the extent of a tortfeasor's liability for the tortious injury he causes to a pet. This statute does not, and cannot, alter the fundamental nature of the underlying (in this case, constitutional) tort. Nor does it limit a victim's *overall* recovery for a tort that includes, but isn't limited to, damage to a pet for vet bills up to $7,500. A far-fetched example illustrates the point. Suppose that someone distractedly (and thus negligently) drove his car into the wrong driveway, crashed into his next door neighbor's garage, smashed the garage door and the car just inside it, and injured the neighbor's rabbit, who lived in a hutch along the garage wall. The Deputy's theory of CJ § 11-110 would limit the neighbor's recovery to the bunny's vet bill and preclude any recovery for the much greater damage to the neighbor's car or house. That cannot be the result the General Assembly intended for that hypothetical or for this case.
>
> * * *
>
> Because pets are property, CJ § 11–110 defines their property value, but it cannot rationally be read to cabin a grossly negligent official's total liability based on the fortuity that he shot a pet rather than something inanimate.

Slip op. at 19-20 (quoting *Brooks*, 220 Md. App. at 469-71).

*Brooks* held that Jennings' constitutional claims weren't subject to the CJ § 11-110 cap. I agree. The hypothetical in *Brooks* said that the injury to the garage door and the car beyond it wouldn't be subject to the cap either. I agree with that too. *Brooks* clearly holds that only the injury to a pet is subject to the $7,500 cap. So, how can the majority award Mr. Reeves more than $7,500 in damages when the only injury was to his dog? In my view, the majority miscounts the number of injuries suffered by Mr. Reeves, *see* Section I of this dissent. By sanctioning an award of damages above the $7,500 cap, the majority is granting multiple awards for the same injury to the same dog. *Brooks* did not contemplate this, and

it certainly did not endorse it. The majority's opinion is an unanticipated and, in my view, an incorrect application of *Brooks*.

For all these reasons, I dissent.