Circuit Court for Prince George's County
Case No. CAL21-00301

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2057

September Term, 2023

STATE OF MARYLAND, ET AL.

v.

ALITA V. GASKILL

Shaw,
Albright,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Albright, J.

Filed: January 16, 2026

*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).

A jury in the Circuit Court of Prince George's County awarded Appellee, former Prince George's County Police Lieutenant Alita V. Gaskill ("Lt. Gaskill"), $215,000 in compensatory damages against the State of Maryland and Maryland State Police Trooper Shareef Lewis ("Tpr. Lewis"), and $975,000 in punitive damages against Tpr. Lewis. Lt. Gaskill had alleged that after a traffic stop, Tpr. Lewis physically assaulted her, handcuffed her, arrested her without probable cause, charged her, and booked her, and sought to hold Tpr. Lewis and the State responsible for damages. Here, the State and Tpr. Lewis appeal the verdict, presenting six questions for our review.[1]

Rephrased for clarity, the State and Tpr. Lewis present the following questions:

I. Did the trial court err in declining to ask Appellants' proposed voir dire question on the topic of bias towards police?

[1] Appellants phrased their questions as follows:

1. Did the trial court abuse its discretion in refusing the defendants' request for a voir dire question regarding police bias?

2. Did the trial court abuse its discretion in prohibiting the defendants from asking Lt. Gaskill about her police training relating to traffic stops and her internal affairs investigation related to this incident?

3. Did the trial court abuse its discretion in giving a First Amendment freedom-of-speech jury instruction that was not generated by the evidence because there were no allegations or facts related to First Amendment claims?

4. Did the trial court abuse its discretion in refusing to allow the jury to view the dash camera video footage?

5. Did the trial court abuse its discretion when it gave the jury a defective verdict sheet that resulted in an inconsistent verdict?

6. Did the trial court abuse its discretion when it denied the defendants' post-trial motions and did not grant a new trial or reduce damages?

II. Did the trial court err in excluding evidence regarding Lt. Gaskill's internal affairs investigation and training related to traffic stops?

III. Did the trial court err in giving the jury a freedom of speech jury instruction?

IV. Did the trial court err in failing to provide a method through which the jury could view the mobile video during deliberations?

V. Did the trial court provide the jury with a verdict sheet that allowed for an inconsistent verdict?

VI. Did the trial court err in denying the Appellants' post-trial motions with regards to actual malice and the damages awarded?

Below, we focus on the trial court's non-pattern freedom of speech jury instruction and the verdict sheet. We agree with the State and Tpr. Lewis that the trial court reversibly erred both by instructing the jury on freedom of speech and using a verdict sheet that allowed for an irreconcilably inconsistent verdict. Accordingly, we vacate the judgments of the circuit court and remand for further proceedings not inconsistent with this opinion. We decline to reach Appellants' remaining questions, as the decisions that generated them may not necessarily recur on remand.[2]

FACTUAL AND PROCEDURAL BACKGROUND

I. The Traffic Stop, Injury, Arrest, Charges, and Booking[3]

On May 15, 2019, following the end of her patrol shift, Lt. Gaskill of the Prince

[2] Because the Senior Judge who presided over the trial of this case is no longer available for recall duty, a different trial judge must be assigned.

[3] The following facts are based upon evidence presented at the jury trial.

George's County Police Department[4] drove through the National Harbor area in her unmarked police cruiser. Despite being off-duty, Lt. Gaskill spoke on her cell phone with a fellow officer as she drove towards home. While driving on the same road, Tpr. Lewis, also off-duty, noticed Lt. Gaskill speaking on her cell phone and began to pursue her vehicle.[5] After noticing Tpr. Lewis pull behind her and activate the emergency lights on his marked cruiser, Lt. Gaskill began to maneuver to the side of the road. For traffic safety and to indicate that she was also a police officer, Lt. Gaskill activated her cruiser's emergency lights as she pulled over.

Upon both vehicles pulling to the side of the road, Lt. Gaskill, who testified to being unsure of the purpose of the stop, exited her vehicle to investigate. She walked towards Tpr. Lewis, put her hands up in confusion, and asked, "What's going on?" Although the parties disagree as to his tone and demeanor, it is undisputed that at this point, Tpr. Lewis ordered Lt. Gaskill to return to her vehicle. According to Lt. Gaskill, as soon as Tpr. Lewis exited his vehicle, he was "irate, angry, belligerent." Tpr. Lewis screamed at Lt. Gaskill to get back into her vehicle, then moved towards her, his hand reaching towards his service weapon. Lt. Gaskill was afraid that Tpr. Lewis was going to shoot her and was glad she was not armed with her own service weapon so as not to give

[4] Lt. Gaskill has since retired from the Prince George's County Police Department. However, since she was an officer at the time this incident occurred, we refer to her using her rank at that time.

[5] The parties disagree as to whether Tpr. Lewis was travelling next to or in the opposite direction as Lt. Gaskill and as to whether he made a U-turn from the other side of the road to pursue her vehicle.

him reason to fire at her.

According to Lt. Gaskill, as she turned to comply with the order to return to her vehicle, Tpr. Lewis, without saying anything further, grabbed Lt. Gaskill by the arm, "threw [her] onto the car, pulled [her] arm back in an aggressive manner, pulled [her arm] up, and put the handcuffs on." After Lt. Gaskill was cuffed, Tpr. Lewis pushed her and ordered her to get on the ground. She did not have the opportunity to identify herself as an officer, nor was she made aware of the purpose of the detention, prior to being cuffed and ordered to the ground. After she was placed in handcuffs, Lt. Gaskill made several requests to be allowed to retrieve her identification from the car, each of which were denied by Tpr. Lewis.

Tpr. Lewis's version of what happened after he ordered Lt. Gaskill to return to her vehicle is somewhat different. According to Tpr. Lewis, Lt. Gaskill began to walk towards him with her hands out, repeatedly expressing, "I'm a cop." Tpr. Lewis, who believed that Lt. Gaskill may have been impersonating an officer, told Lt. Gaskill several times to take a seat back in her car, and that instead of complying, she continued to say, "Why, why[?] . . . I'm a cop." Tpr. Lewis thought Lt. Gaskill was turning to return to her vehicle, when she instead made "a bucking motion toward [him]," that "based off of [his] training, knowledge, and experience[,]" he understood as "an aggressive motion." Due to this perceived aggression towards him, Tpr. Lewis then grabbed Lt. Gaskill's wrist, pinned her against the car, and "used some force" to bring her wrists behind her and place her in cuffs. He then asked Lt. Gaskill twice to take a seat on the ground, after which she

complied.

Not long after Lt. Gaskill was handcuffed on the ground, other Prince George's County Police officers arrived on the scene. Corporal Erroll Layne was the first to arrive. Despite Corporal Layne's arriving in an unmarked cruiser that was "identical" to the one driven by Lt. Gaskill, Tpr. Lewis did not question Corporal Layne's status as a law enforcement officer. Corporal Layne saw Lt. Gaskill handcuffed on the ground, crying. Lt. Gaskill asked Corporal Layne to "tell [Tpr. Lewis] who [she is]." As Tpr. Lewis recounted his version of events to Corporal Layne, Lt. Gaskill voiced her disagreement, stating to Tpr. Lewis, "you assaulted me," and "you're a liar." Although Corporal Layne then confirmed Lt. Gaskill's status as an officer, Tpr. Lewis did not appear to believe him and instead asked Corporal Layne to go into Lt. Gaskill's pocketbook to retrieve her ID. Corporal Layne felt it was inappropriate and disrespectful for the Trooper to ask him to dig through Lt. Gaskill's belongings.

Major Shaniqua Smith, formerly of the Prince George's County Police Department, testified that Tpr. Lewis should have known that Lt. Gaskill's cruiser was an actual police vehicle. According to Major Smith, "you can tell it's an actual police car, it has Maryland . . . state tags on it. . . . [T]he tags are different than a regular civilian vehicle, so you know it's a government vehicle."

Sergeant Alphonso Hayes, a Prince George's County Police supervisor whom Corporal Layne had called to the scene for support, stated that upon arrival he attempted to inquire as to why Lt. Gaskill was in cuffs, but Tpr. Lewis "didn't answer" his

questions. Eventually, after making several requests, Sergeant Hayes was able to convince Tpr. Lewis to remove Lt. Gaskill's handcuffs.

Lt. Gaskill, Tpr. Lewis, and several other officers remained on the scene for hours as supervisors were consulted and officers dealt with paperwork. Lt. Gaskill was eventually issued a written warning for the initial alleged cell-phone-related traffic violation and subsequently placed under arrest by Tpr. Lewis. She was patted down by a female officer before being placed in the back of another trooper's vehicle for transportation. After being placed under arrest, Lt. Gaskill was taken to the hospital due to pain in her neck and shoulder from the incident. She was then transported to the Forestville State Trooper Barrack before ultimately arriving at the Prince George's County Department of Corrections for booking.

In the Statement of Probable Cause that Tpr. Lewis later submitted, he stated that Lt. Gaskill was arrested for failing to obey a lawful order and resisting arrest.[6] He elaborated:

> I . . . identified myself as a Maryland State Trooper. . . . I asked the driver if she can provide identification and that I have handled cases with police

[6] Lt. Gaskill was arrested and charged with violating Maryland Code, Criminal Law Article ("CL") § 10-201(c)(3), which states that "a person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace." She was also charged with violating CL § 9-408(b) which states that "a person may not intentionally: (1) resist a lawful arrest; or (2) interfere with an individual who the person has reason to know is a police officer who is making or attempting to make a lawful arrest or detention of another person."

The original statement of probable cause submitted by Tpr. Lewis listed the second statute under which she was charged as CL § 9-405(b)(2) Escape in the Second Degree. However, Tpr. Lewis testified that the criminal code was "a typo," and he did not intend to charge her with Escape in the Second Degree.

> impersonators, and she chuckled. I stated to the driver 'Ok, but grab a seat back in the vehicle." The driver stated "For what" as she was walking towards the rear of her car. During the short interaction, I could tell she was getting angry by her voice tone and body language. I started walking towards the driver and again stated for her to get into her vehicle and she responded "Why, I'm a cop." I stated to her that I have activated my lights initiating a traffic stop based on the cell phone Violation and if you are a cop, you should be cooperating. I again told her to get into her car and she took a fast step with a quick body movement towards me in a manner that appeared to be challenging and intimidating. Based on her failing to obey a lawful order and failing to identify herself, I advised her that she is being detained until I can identify who she really is. While she was standing in the door jam of the driver's door which was opened, I grabbed her right wrist with my right hand and started to bring it to the small of her back, she starts to sit down in the driver seat. I again advised her that she is being detained and I stood her up out of the seat and again attempt to place her right hand behind her back. At that point she started to pull her hand away from me toward her front in a clinching motion. I again pulled her right wrist towards the small of her back with my right hand while using my left hand pressing on her back, pressing her against the door frame. . . . While having positive control of her left wrist, I attempt to bring her left wrist to the small of her back, but she pulled and shrugged her left hand away saying "I can't believe this. As she pulled her left hand away, my cell phone which was attached to my duty belt fell and landed on the ground. While still having her right wrist to the small of her back. I pressed her up against the car and regained control of her left wrist, brought it back to the small of her back. I again advised her that she is being detained while walking her to the rear of her car. While walking her to the rear of her car, she was pulling and stating that she can't believe this. I was able to place my MSP issued handcuffs on her and told her to sit on the curb while I try to identify her.

After being charged with failing to obey the order of a law enforcement officer and resisting arrest, Lt. Gaskill was eventually released on her own recognizance at around 2 a.m. the next morning. Five months later, the State's Attorney for Prince George's County nolle prossed the charges against Lt. Gaskill.

II. The Operative Complaint

On November 9, 2021, Lt. Gaskill filed a second amended complaint and request for jury trial against Defendants Tpr. Lewis and the State of Maryland.[7] Lt. Gaskill alleged seven counts. Against both Defendants, Lt. Gaskill alleged violations of Articles 24 and 26 of the Maryland Declaration of Rights and battery. Against Tpr. Lewis, Lt. Gaskill alleged malicious prosecution, false arrest, and gross negligence. Against the State, the complaint alleged negligence.

A. Constitutional Torts

Lt. Gaskill's second amended complaint contained no allegations of a free speech violation, nor did she allege that her rights had been violated in retaliation for her exercise of free speech. Instead, under Article 24 of the Maryland Declaration of Rights, Lt. Gaskill alleged that Tpr. Lewis and the State "depriv[ed] her of liberty without due process of law, freedom from unlawful seizure, and right to bodily integrity." According to Lt. Gaskill, the violation occurred when Tpr. Lewis "improperly seized [Lt. Gaskill] using excessive force causing [Lt. Gaskill] to sustain physical and emotional injuries, all with malicious intent and without proper justification or probable cause."

Under Article 26, Lt. Gaskill alleged that Tpr. Lewis and the State violated her right to "be free from unreasonable search and seizure, when they physically assaulted her, arrested her without probable cause, and searched her person without the necessary

[7] Lt. Gaskill's initial complaint was filed on January 6, 2021. She then submitted a First Amended Complaint on March 12, 2021, before submitting the operative Second Amended Complaint on November 9 of that year.

reasonable suspicion." Lt. Gaskill's basis for this allegation was lack of probable cause, not that Tpr. Lewis had retaliated against her for her use of protected speech.

B. Common Law Torts

Lt. Gaskill's second amended complaint included several common law torts, none of which alleged that Tpr. Lewis and the State had retaliated against Lt. Gaskill for her use of protected speech. Against Tpr. Lewis and the State, Lt. Gaskill alleged battery based on the force Tpr. Lewis used in detaining Lt. Gaskill. Lt. Gaskill's false arrest and malicious prosecution counts, lodged against Tpr. Lewis, were predicated on Lt. Gaskill having been arrested and charged without probable cause, and on the allegedly false statements Tpr. Lewis made in support of the arrest. The complaint also alleged gross negligence against Tpr. Lewis, arguing that he breached his duty of care to Lt. Gaskill by arresting her unlawfully, violating her constitutional rights, and using excessive force. Lastly, Lt. Gaskill alleged negligence against the State based upon the actions of Tpr. Lewis in his official capacity as a state employee.

III. The First Amendment Jury Instruction and References in Lt. Gaskill's Closing Argument

After the close of evidence, Lt. Gaskill requested a non-pattern jury instruction on freedom of speech: "In Maryland, a citizen has a right under the Maryland Constitution to freedom of speech. This constitutional right includes the right to disagree with a police officer, even using obscene language, and express outrage at police conduct." Tpr. Lewis and the State objected, saying "there's no allegation of a freedom of speech issue in this case. It's not one of the counts. It's not under the Maryland Declaration of Rights. This is

not applicable to this case." The trial court responded, "Well, let's explore the path of least resistance," then asking Lt. Gaskill, "[I]s this an instruction that you want?" When she responded in the affirmative, the trial court noted Tpr. Lewis's and the State's objection and delivered the instruction to the jury verbatim.

Lt. Gaskill's attorney made several references to the free speech jury instruction during the first phase of closing argument.

> But then, when she has for the first time in her life handcuffs put on her in public for something that she didn't do, you bet she's loudmouthed. Any one of us would be. And as Judge Jackson just instructed you, she has an absolute constitutional right to speak her mind about this, to speak it as loud as she wants, to be as offensive as she wants, to say whatever she wants about how he's treating her. And I would argue even a duty to do it. You just can't let somebody put handcuffs on you when it's wrong and you did nothing about it.
>
> . . . [A]s the Court's instructions made clear, we have an absolute right of free speech in this country and we cannot put handcuffs on someone because we don't like their attitude or demeanor or their [tone].
>
> But that's exactly what this trooper did. He was using his law enforcement power to punish her and embarrass her because of her attitude and tone. And when it comes to definition of malice, that's classic malice. That's an improper motive.

IV. Verdict Sheet and the Jury's Verdict

Prior to the trial court's instructing the jury, the parties offered proposed verdict sheets. The trial court opted to use its own verdict sheet, a decision that drew various objections from Lt. Gaskill, the State, and Tpr. Lewis. We detail the particulars of the trial court's verdict sheet and the objections in our discussion below.

Ultimately, the jury returned a verdict in favor of Lt. Gaskill, finding Tpr. Lewis liable for (1) false arrest, (2) malicious prosecution, (3) battery, (4) violation of Article 24

of the Maryland Declaration of Rights, and (5) gross negligence. The jury found the State of Maryland liable for (1) violation of Article 24 of the Maryland Declaration of Rights and (2) negligence.[8] The jury awarded Lt. Gaskill $215,000 in compensatory damages and $975,000 in punitive damages against Tpr. Lewis.[9] The jury answered the relevant portions of the verdict sheet as follows:

> 6. Do you find that the Defendant State of Maryland was negligent?
>
> ✓ YES ____ NO
>
> ***Proceed to question 7***
>
> 7. Do you find that the Defendant Shareef Lewis was grossly negligent?
>
> ✓ YES ____ NO
>
> ***Proceed to question 8***
>
> 8. If you answered "Yes" to any of the preceding questions, what amount of damages, if any, do you award to the Plaintiff Alita Gaskill?
>
> Damages: $ 215,000
>
> **Punitive Damages**
>
> 9. What punitive damages, if any, do you award Ms. Gaskill against the Defendant, Shareef Lewis, for his conduct against Ms. Gaskill?
>
> Punitive Damages[:] $ 975,000

[8] The jury found in favor of the Defendants on Lt. Gaskill's Maryland Declaration of Rights Article 26 Claim.

[9] The judgment that followed against the State did not align with the jury's verdict. Specifically, the judgment said:

> [X] Judgment entered in favor of the Plaintiff Alita V Gaskill and against the State of Maryland.
> [X] in the sum of $1,190,000.00

The judgment entered in Lt. Gaskill's favor against Tpr. Lewis was also in the amount of $1,190,000.

This timely appeal followed.

DISCUSSION

I. Freedom of Speech Jury Instruction

A. The Parties' Contentions

The State and Tpr. Lewis challenge the freedom of speech instruction, first arguing that it inaccurately stated the law with regards to a citizen's rights during a traffic stop. The Appellants further contend that the instruction was inapplicable to the case because it alluded to a first amendment retaliation claim which had not been pled nor argued at trial. Finally, Appellants contend that the court's decision to give the instruction was prejudicial to their case, both due to its inapplicability as well as its "highly prejudicial" wording, therefore constituting reversible error.

Lt. Gaskill does not dispute that her theory in requesting the non-pattern jury instruction was that Tpr. Lewis retaliated against her based on a dislike of her tone and demeanor. Instead, she argues that the instruction "set forth, in part, [her] theory of the case." Relying on *Diehl v. State*, 294 Md. 466 (1982), Lt. Gaskill contends that the instruction correctly stated a citizen's right to protest police misconduct during a traffic stop. Lt. Gaskill also points to her counsel's mention of free speech in closing argument as an indication of the instruction's applicability to her case.

B. Analysis

"A trial court's decision to give a particular jury instruction is reviewed under an abuse of discretion standard." *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 588–89 (2020). "The general rule regarding jury instructions requires that (1) the

instruction must correctly state the law, and (2) that law must be applicable in light of the evidence before the jury." *Maurer v. Pa. Nat. Mut. Cas. Ins. Co.*, 404 Md. 60, 68 (2007) (cleaned up). "[W]e review without deference the issue of whether the jury instruction was a correct statement of the law." *Seley-Radtke v. Hosmane*, 450 Md. 468, 482 (2016).

Error in the jury instructions does not always warrant reversal, however. We will not reverse a circuit court's judgment if the error is harmless. *Barksdale v. Wilkowsky*, 419 Md. 649, 657 (2011). "[A] party challenging an erroneous jury instruction in a civil case must demonstrate to the court why the error was prejudicial." *Id.* at 669. In *Barksdale*, our Supreme Court summarized the analysis a reviewing court must undertake to determine whether an erroneous jury instruction is prejudicial:

> An erroneous instruction may be prejudicial if it is misleading or distracting for the jury, and permits the jury members to speculate about inapplicable legal principles. An error may also be prejudicial if the error, by itself, could have precluded a finding of liability where one was warranted. We have also recommended a non-exclusive, four-factor list for the reviewing court to consider. Moreover, in certain cases, the mere inability of a reviewing court to rule out prejudice, given the facts of the case, may be enough to declare an error reversible. The reviewing court, in considering these issues, should engage in a comprehensive review of the record, and base its determination on the nature of the instruction and its relation to the issues in the case.

Id. at 669–70 (cleaned up). The "four-factor list" that our Supreme Court recommended is

> (1) the degree of conflict in the evidence on critical issues; (2) whether respondent's argument to the jury may have contributed to the instruction's misleading effect; (3) whether the jury requested a rereading of the erroneous instruction or of related evidence; and (4) the effect of other instructions in remedying the error.

Id. at 669 (cleaned up).

We agree with the State and Tpr. Lewis that the trial court abused its discretion in instructing the jury on Lt. Gaskill's right to free speech. Fundamentally, Lt. Gaskill did not plead an Article 40[10] retaliation claim, either as a standalone claim or as part of her Article 24 and Article 26 claims. The elements that Lt. Gaskill should have pled to establish her cause of action were not completely reflected in the non-pattern instruction the trial court gave, leaving the instruction an incomplete—and therefore incorrect—statement of the law regarding an Article 40 retaliation claim. Additionally, because the evidence was insufficient to support all of the elements of an Article 40 retaliation claim, the evidence did not warrant a retaliation instruction, even assuming that that is what the non-pattern instruction was. Based on our comprehensive review of the record, we conclude that the State and Tpr. Lewis were probably prejudiced by the erroneous non-pattern instruction and that the error was not harmless.

1. The instruction was not a correct statement of law.

To the extent that the non-pattern jury instruction suggested that Lt. Gaskill had an unfettered right under the Maryland Declaration of Rights to disagree with the police, it was an incorrect statement of the law. Article 40 of the Maryland Declaration of Rights provides "[t]hat the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege." Md. Const. Decl. of Rts., art. 40. The protections of Article 40 are typically read to be coextensive with those of the

[10] As we discuss below, Article 40 of the Maryland Constitution's Declaration of Rights protects one's free speech rights. *See* Md. Const. Decl. of Rts., art. 40.

First Amendment. *See, e.g.*, *Clear Channel Outdoor, Inc. v. Dir., Dep't of Fin. of Balt. City*, 472 Md. 444, 457 (2021) ("[T]his Court has sometimes held out the possibility that Article 40 could be construed differently from the First Amendment in some circumstances, [but] the Court has generally regarded the protections afforded by Article 40 as 'coextensive' with those under the First Amendment.").

In general, the First Amendment protects individuals from state regulation of their protected speech, as well as state retaliation for their protected speech. *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 499 (4th Cir. 2005). Here, the State and Tpr. Lewis argue that Lt. Gaskill's justification for requesting the non-pattern jury instruction, was, in essence a First Amendment retaliation claim. Lt. Gaskill does not dispute that retaliation on the part of Tpr. Lewis was her theory as to why the non-pattern instruction was appropriate.

Ordinarily, a plaintiff alleging law enforcement retaliation for having exercised their First Amendment rights must plead and prove three elements. *Constantine*, 411 F.3d at 499 (as to a claim brought pursuant to 42 U.S.C. § 1983, explaining that "[a] plaintiff seeking to recover for First Amendment retaliation must allege that (1) she engaged in protected First Amendment activity, (2) the defendants took some action that adversely affected her First Amendment rights, and (3) there was a causal relationship between her protected activity and the defendants' conduct").

In order to establish a causal connection between the protected speech and the adverse action, the plaintiff must prove that the protected conduct was a "substantial" or

"motivating" factor in the defendant's adverse action.[11] *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285–87 (1977) (as to a claim brought pursuant to 42 U.S.C. § 1983, holding that the plaintiff teacher had met the burden to show that his protected conduct was a motivating factor in his being let go by the defendant school board). Once the plaintiff shows that her protected conduct was a motivating factor, the burden shifts to the defendant to put forth evidence showing they would have taken the same adverse action in the absence of the protected conduct, in which case the defendant cannot be held liable. *Id.* at 287 (holding that, having determined that the plaintiff teacher had met his burden, the District Court should have determined whether the defendant school board had properly shown that it would have let the teacher go even in the absence of the protected conduct).

Here, Lt. Gaskill did not plead an Article 40 retaliation claim in her second amended complaint. But even if Lt. Gaskill had plead such a claim, the trial court's non-pattern jury instruction did not include all the necessary elements. The non-pattern instruction read, "[i]n Maryland, a citizen has a right under the Maryland Constitution to freedom of speech. This constitutional right includes the right to disagree with a police

[11] Two federal circuit courts of appeal have further narrowed this standard for causation in various ways. For example, the Fourth Circuit requires the plaintiff not only prove that the defendant aware of the protected conduct, but also show "some degree of temporal proximity to suggest a causal connection." *Constantine*, 411 F.3d at 511. Alternatively, the Eleventh Circuit has held that, "[i]n order to establish a causal connection, the plaintiff must show that the defendant was subjectively motivated to take the adverse action because of the protected speech." *Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1197 (11th Cir. 2011) (claim brought pursuant to 42 U.S.C. § 1983).

officer, even using obscene language, and express outrage at police conduct." Even if the instruction could be said to have defined protected conduct, i.e., the first element of a retaliation claim, it failed to address the other two required elements, adverse effect and causation. Therefore, the non-pattern instruction was not a correct statement of the law.

Lt. Gaskill identifies no appellate case, nor have we found one, wherein a plaintiff sustained a First Amendment or Article 40 retaliation claim based on the bare allegation of a constitutional right to disagree with a police officer about police conduct. *Diehl v. State*, 294 Md. 466 (1982), the case on which Lt. Gaskill does rely, is distinguishable if for no other reason than Mr. Diehl was not a civil plaintiff pressing an affirmative retaliation claim.

There, Mr. Diehl was convicted of disorderly conduct and resisting arrest based upon his use of profane language towards a police officer who had instructed Mr. Diehl to return to his vehicle. *Id.* at 469. Mr. Diehl's speech alone was what formed the basis of his arrest, speech that our Supreme Court found to be protected under the First Amendment. *Id.* at 471–72. Our Supreme Court ultimately reversed Mr. Diehl's convictions, finding that there was no probable cause for his arrest and no basis for his convictions, as both were premised solely upon protected speech. *Id.* at 479–80.

Here, by contrast, there was some evidence that Tpr. Lewis did have probable cause to arrest Lt. Gaskill before she criticized Tpr. Lewis. Specifically, there was evidence that after Lt. Gaskill left her cruiser, Tpr. Lewis ordered her to return to it, and that she failed to do so. Thus, there was some evidence that before she criticized Tpr.

Lewis, Lt. Gaskill failed to abide by Tpr. Lewis's lawful order.[12] Even if *Diehl* has some tangential applicability to affirmative retaliation claims (both involve free speech), *Diehl* does not suggest that a citizen's right to free speech is an absolute override of an otherwise valid arrest based on probable cause. Nor does it suggest that a civil plaintiff can rely on a retaliation theory without having pled a retaliation claim and with fewer than all of the required elements for such a claim.

2. The instruction was not applicable to the case at hand.

In determining the propriety of a particular requested instruction, "the trial court assesses whether the evidence produced at trial warrants a particular instruction on legal principles applicable to that evidence and to the theories of the parties. . . . [A] requested instruction [should] be given only when there is evidence in the record to support it." *Handy v. Box Hill Surgery Ctr. LLC*, 255 Md. App. 183, 191–92 (2022) (cleaned up). To that end, we must "determine whether there exists that minimum threshold of evidence necessary to establish a prima facie case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired." *Id.* at 192 (cleaned up).

[12] Lt. Gaskill was arrested and charged with failure to obey a lawful order and resisting arrest. The statute for failure to obey a lawful order, CL § 10-201(c)(3), states that "a person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace." The statute for resisting arrest, CL § 9-408(b), states that "a person may not intentionally: (1) resist a lawful arrest; or (2) interfere with an individual who the person has reason to know is a police officer who is making or attempting to make a lawful arrest or detention of another person."

Here, even if Lt. Gaskill could somehow have proceeded on an Article 40 retaliation claim without having alleged one, Lt. Gaskill identifies no "minimum threshold of evidence" to suggest that Lt. Gaskill's protected speech was a motivating factor in Tpr. Lewis's decision to detain, arrest, and charge her as he did. Instead, Lt. Gaskill's theory, as pled, was that Tpr. Lewis detained, arrested, and charged her without probable cause. Tpr. Lewis, in his Statement of Probable Cause, indicated that he arrested and charged Lt. Gaskill because she failed to obey his lawful order to return to her vehicle. Lt. Gaskill never produced evidence to suggest that Tpr. Lewis's decision to detain, arrest, and charge her was subjectively motivated by a wish to take adverse action against Lt. Gaskill because of her protected speech. For this reason, as well, the trial court erred in giving the non-pattern jury instruction to the jury.

3. The instruction created a probability of prejudice.

"In a civil case, a legal error in a jury instruction does not necessarily mandate reversal. To overturn a jury verdict, a jury instruction must not only be incorrect legally, but also prejudicial." *Armacost v. Davis*, 462 Md. 504, 524 (2019). A complainant who has proven error also has the burden to prove that prejudice arising from the erroneous instruction was probable, rather than simply possible. *Webb v. Giant of Md.*, 477 Md. 121, 143 (2021).

Jury instructions are prejudicial if they are "misleading" and "distracting," and "permit the jury to speculate as to improper issues which may be dispositive." *Barksdale*, 419 Md. at 667 (cleaned up). In order to show prejudice from an erroneous jury

instruction, a complainant must "show[] the *nature* of the erroneous instruction and its *relation* to the issues in the case. A reviewing court can then weigh the materiality of the error and the potential that it poisoned the jury deliberations." *Barksdale,* 419 Md. at 667.

In *Fry v. Carter*, 375 Md. 341, 356 (2003), our Supreme Court held that an improper jury instruction is prejudicial where it permits the jury to speculate outside the scope of the pleadings. In that case, which involved potential negligence on the part of a truck driver, the trial court instructed the jury on the concept of unavoidable accidents. *Id.* at 354–55. The Supreme Court found that the instruction was not only improper in a negligence case, but prejudicial, because the instruction insinuated that the jury could decide the case on unavoidable accident grounds, a ground that distracted from the negligence theory pled. *Id.* at 356.

In *Webb v. Giant of Maryland, LLC*, a later case that implemented the *Barksdale* analysis for prejudice, our Supreme Court determined that an improper spoliation instruction was prejudicial to a supermarket's defense in a slip and fall case. 477 Md. at 147. There, the trial court had allowed a spoliation instruction in a case where no evidence had been presented that suggested any evidence had been destroyed or concealed. *Id.* On appeal, the Supreme Court found that the instruction was prejudicial because it was misleading and allowed the jury to speculate about the applicability of a legal principle about which no relevant evidence had been presented. *Id.* The Supreme Court was also persuaded by the fact that the petitioner's counsel "shone a spotlight" on the instruction in closing argument. *Id.*

Here, the State and Tpr. Lewis contend that the non-pattern jury instruction prejudiced them by "inject[ing] an issue that had no support in the pleadings or evidence[,]" and made it more likely that the jury "view[ed] Tpr. Lewis's actions in a negative light." Further, the State and Tpr. Lewis argue that the wording of the instruction insinuated that Lt. Gaskill's right to free speech could override any valid probable cause for her arrest. Lastly, the State and Tpr. Lewis contend that the wording of the non-pattern instruction was also prejudicial because it included "an example regarding interactions with police that was substantially similar, if not exactly, to what occurred in this case." They add that the error "was compounded" by Lt. Gaskill's attorney who "seized on" it in closing argument.[13]

We agree with the State and Tpr. Lewis that the non-pattern jury instruction was probably, not merely possibly, prejudicial to them. The instruction was prejudicial because it allowed the jury to weigh the propriety of Tpr. Lewis's arrest of Lt. Gaskill on grounds other than the no-probable-cause theory that Lt. Gaskill pled. *See Fry*, 375 Md. at 356 (finding prejudice in instruction that insinuated jury could decide case on unavoidable accident grounds, which distracted from negligence theory that was pled). Here, the instruction incorrectly suggested that even if Tpr. Lewis had probable cause to arrest Lt. Gaskill, Lt. Gaskill's right to freedom of speech could override probable cause, a theory Lt. Gaskill did not plead and that does not comport with the law. The jury went

[13] Lt. Gaskill offers no appellate argument on the issue of probable prejudice (or not) to the State and Tpr. Lewis from the trial court's erroneous non-pattern jury instruction.

on to find in favor of Lt. Gaskill on her Article 24 claim, i.e., to find that she had been arrested without probable cause.

The instruction also allowed Lt. Gaskill in closing argument to tie her punitive damages claim, and the showing of actual malice on which it depended, to a free speech violation, a claim that Lt. Gaskill had not made. Indeed, Lt. Gaskill argued that Tpr. Lewis acted with "classic malice" for using his law enforcement power to punish and embarrass Lt. Gaskill for what she had said:

> But then, when she has for the first time in her life handcuffs put on her in public for something that she didn't do, you bet she's loudmouthed. Any one of us would be. And as Judge Jackson just instructed you, she has an absolute constitutional right to speak her mind about this, to speak it as loud as she wants, to be as offensive as she wants, to say whatever she wants about how he's treating her. And I would argue even a duty to do it. You just can't let somebody put handcuffs on you when it's wrong and you did nothing about it.
>
> . . . [A]s the Court's instructions made clear, we have an absolute right of free speech in this country and we cannot put handcuffs on someone because we don't like their attitude or their demeanor or their [tone].
>
> But that's exactly what this trooper did. He was using his law enforcement power to punish her and embarrass her because of her attitude and tone. And when it comes to definition of malice, that's classic malice. That's an improper motive.

The jury awarded Lt. Gaskill punitive damages against Tpr. Lewis in a sum that was more than four times more than its compensatory damages award.[14]

A review of the four factors from *Barksdale*, 419 Md. at 669, confirms that the non-pattern jury instruction was probably prejudicial. The first factor, "the degree of

[14] We do not reach the question of whether the punitive damages award here was excessive.

conflict in the evidence on critical issues," highlights the problem. Because Lt. Gaskill did not plead an Article 40 violation, she never identified the speech that she claims was "protected speech." Nor did she present any evidence to suggest that Tpr. Lewis heard Lt. Gaskill's unidentified protected speech, or that he was subjectively motivated by it to violate Lt. Gaskill's free speech rights.[15] Without an Article 40 retaliation claim having been plead, there was no real focus on what evidence had been presented to support the elements for such a claim.

The second factor, "whether respondent's argument to the jury may have contributed to the instruction's misleading effect," is also present. In closing argument, Lt. Gaskill's attorney argued that, "as the Court's instructions made clear, we have an absolute right of free speech in this country and we cannot put handcuffs on someone because we don't like their attitude or demeanor or their [tone][,]" adding "[Tpr. Lewis] was using his law enforcement power to punish [Lt. Gaskill] and embarrass her because of her attitude and tone. And when it comes to definition of malice, that's classic malice. That's an improper motive." This argument compounded the misleading effect of the erroneous instruction by "[shining] a spotlight" on it, *see Webb*, 477 Md. at 147, and tying it to the jury's

[15] In his statement of probable cause, Tpr. Lewis stated that he heard Lt. Gaskill say several things. She asked what was going on, stated that she was a police officer, and said that she could not believe Tpr. Lewis had assaulted her. Tpr. Lewis also reported that Lt. Gaskill stated several times that she would not allow Tpr. Lewis to go into her car to retrieve her identification. Tpr. Lewis's testimony at trial mirrored his statement of probable cause on this point.

consideration of actual malice, a necessary ingredient, the jury was told, for the award of punitive damages.

The third factor, "whether the jury requested a rereading of the erroneous instruction or of related evidence," is implicated here as well. During deliberations, a note from the jury asked, "[p]lease define what the Constitutional Rights under Article 24 and Article 26 are of the Maryland Declaration of Rights." Articles 24 and 26, which provide due process protections and prevent against unreasonable or unsupported governmental action, are both relevant to the requirement that the police have valid probable cause before initiating an arrest. Therefore, the instruction's insinuation that free speech rights could override a valid arrest could have interfered with the jury's understanding of what protections from governmental action citizens truly possess. The jury's request to re-read Articles 24 and 26 points towards a prejudicial effect.

Finally, as for the fourth factor, "the effect of other instructions in remedying the error," the other instructions did not remedy the error. There were no other jury instructions that stated what was required to prove a retaliation claim or to clarify that a citizen cannot rely on their free speech rights to avoid or vitiate an otherwise legitimate arrest.

Because the State and Tpr. Lewis have shown probable prejudice from instructional error, we will vacate the verdicts and remand for a new trial.

II. Verdict Sheet

Appellants challenge the trial court's verdict sheet on two separate grounds: (1) that it failed to require a specific finding about whether Tpr. Lewis acted with malice; and

(2) that it allowed for irreconcilably inconsistent verdicts of negligence by the State and gross negligence by Tpr. Lewis, with the result that compensatory damages were awarded against the State and Tpr. Lewis. The State and Tpr. Lewis contend that these verdicts, taken together, are a legal impossibility given that gross negligence by Tpr. Lewis would mean the State was immune, while a verdict of negligence on the part of the State would mean that Tpr. Lewis was immune.

Lt. Gaskill counters that Appellants' argument about the inconsistency of the verdict is not preserved because Appellants did not object to the verdict sheet on that basis. She adds that Appellants' objection focused on the need for a malice question, not on the need to avoid an inconsistent verdict. In the alternative, Lt. Gaskill argues that the verdict sheet did not allow for an inconsistent verdict because "a reasonable jury could conclude both that Tpr. Lewis acted with gross negligence and that the State was negligent for failing to prevent Tpr. Lewis from acting with gross negligence.

"Generally, under common law, the State enjoys sovereign immunity and is thus protected from suit for both ordinary torts and State constitutional torts. The State, however, has partially waived this immunity by statute." *Cooper v. Rodriguez*, 443 Md. 680, 706 (2015) (cleaned up). The State's waiver of immunity appears in the Maryland Tort Claims Act ("MTCA"), specifically at Section 12-104 of Maryland's State Government Article. Md. Code Ann., State Gov't ("SG") § 12-104(a)(1) ("Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law,

the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.").

The extent to which the State has waived its sovereign immunity for the tortious acts of its employees mirrors the extent to which those employees are immune from liability for their tortious acts. The State is not liable, i.e., its immunity is not waived, for punitive damages or for a tortious act or omission that "[i]s not within the scope of the public duties of the State personnel" or "made with malice or gross negligence[,]" among other exceptions. Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 5-522(a)(1) and (4). In turn, "State personnel"[16] are immune from liability for tortious acts or omissions within the scope of their employment and "made without malice or gross negligence." CJP § 5-522(b); *Cooper v. Rodriguez*, 443 Md. at 708. Put another way, the "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).

In regard to punitive damages, Maryland requires actual malice to warrant an award of punitive damages. *Scott v. Jenkins*, 345 Md. 21, 33 (1997) ("[W]ith respect to both intentional and non-intentional torts, an award of punitive damages must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful

[16] As a member of the Maryland State Patrol, Tpr. Lewis was "State personnel[.]" *See* SG § 12-101 ("In this subtitle, unless the context clearly requires otherwise, 'State personnel' means: (1) a State employee or official who is paid in whole or in part by the Central Payroll Bureau in the Office of the Comptroller of the Treasury . . . .").

motive, intent to injure, ill will, or fraud." (cleaned up)). Moreover, punitive damages "cannot be recovered without proof of actual loss. Hence, a necessary condition for the recovery of punitive damages is an underlying award of compensatory damages." *Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 639 (2005) (cleaned up).

Maryland distinguishes between challenges to the verdict sheet and challenges to the verdict itself. As to the former, we review the trial court's decision to use a particular verdict sheet for abuse of discretion. *Reiss v. Am. Radiology Servs., LLC*, 241 Md. App. 316, 333, *aff'd*, 470 Md. 555 (2020). We "will overturn a trial judge's decision to use a particular verdict sheet if we find both that the trial judge committed an error and that the error prejudiced [the appellant's] case.'" *S & S Oil, Inc. v. Jackson*, 428 Md. 621, 629 (2012). With respect to the verdict itself, "[o]rdinarily, this court will not interfere with a jury verdict, even one that is inconsistent." *Travel Comm., Inc. v. Pan Am. World Airways, Inc.*, 91 Md. App. 123, 149, *cert. denied*, 327 Md. 525 (1992). But an appellate court will overturn a jury's verdict for inconsistency if the verdict is irreconcilably inconsistent. *Anne Arundel Cnty v. Fratantuono*, 239 Md. App. 126, 143 (2018). "Where the answer to one of the questions in a special verdict form would require a verdict in favor of the plaintiff and an answer to another would require a verdict in favor of the defendant, the verdict is irreconcilably defective." *Bacon & Assocs., Inc. v. Rolly Tasker Sails (Thailand) Co.*, 154 Md. App. 617, 627 (2004) (cleaned up).

We agree with the State and Tpr. Lewis that the trial court abused its discretion in using a verdict sheet that allowed the jury to award punitive damages against Tpr. Lewis

and compensatory damages against the State. In Question 9, the jury awarded Lt. Gaskill punitive damages from Tpr. Lewis of $975,000. The award of punitive damages could not have been made without actual malice on the part of Tpr. Lewis. But actual malice by Tpr. Lewis should have precluded a finding of liability on the part of the State. And yet, at Question 6, the jury also found the State "negligent," and at Question 8, awarded damages against the State.

From Tpr. Lewis's perspective, the jury's finding that the State was negligent should have precluded either damage award against him. Because Tpr. Lewis was among Maryland's "state personnel[,]" the State, and not Tpr. Lewis, was liable for Tpr. Lewis's negligent conduct. And yet, at Question 8, the jury awarded compensatory damages against Tpr. Lewis (and the State) of $215,000.

Because the State cannot be liable for Tpr. Lewis's conduct if he was acting with actual malice, or because Tpr. Lewis cannot be liable for his own conduct if he was merely negligent, these verdicts (taken together) are a legal impossibility under the MTCA, irreconcilably inconsistent, and prejudicial to the State and Tpr. Lewis.

Lt. Gaskill's contention that Appellants' challenges to the verdict sheet are unpreserved does not persuade us otherwise. Lt. Gaskill argues that the State and Tpr. Lewis waived their argument that the verdict sheet was potentially inconsistent as to negligence and gross negligence because they failed to object on this basis. To be sure, a party may not assign error to a verdict sheet "unless the party objects on the record before the jury retires to consider its verdict, stating distinctly the matter to which the party

objects and the grounds of the objection." Md. Rule 2-522(b)(5). Nor will an objection to one aspect of a verdict sheet preserve an appellate challenge to a different aspect of the verdict sheet. *Selective Way Ins. Co. v. Nationwide Prop. and Cas. Ins. Co*., 242 Md. App. 688, 740 (2019). Ultimately, "it is counsel's responsibility to assure that all critical issues are submitted to the jury." *Id.* (cleaned up).

Here, the State and Tpr. Lewis did object to the verdict sheet on the ground that it could generate an inconsistent verdict and lacked a specific question about whether Tpr. Lewis acted with actual malice.

[Defendants' Attorney]:	For us, for the verdict sheet***, Judge, there's no specific break out. It just asks if you find, if you find that Trooper Lewis acted with malice. That was included on Defendant's proposed jury instruction -- proposed verdict sheet.***
[Lt. Gaskill's Attorney]:	It's already covered by the instructions.
[Lt. Gaskill's Attorney]:	So I think the best way to do this is that the attorneys in closing argument rely on the law as it applies to those different standards so we don't create a risk of having an inconsistent verdict in terms of these issues.
[Lt. Gaskill's Attorney]:	The problem with the question is it doesn't say what form of malice, because there's three or four different forms of malice.
[THE COURT]:	Here's what I'm going to do. . . . I am going to insert the question, do you find that Trooper Lewis acted with actual malice, and then it will say, Question 9, if you answer yes to any of the preceding questions, what amount of damages, if any, go for the rest of it.
. . .	
[Lt. Gaskill's Attorney]:	I think the concern is they can come -- for 1 through 7, they could say no. They could find actual malice which would then create --

[Lt. Gaskill's Attorney]:	. . . if we add a malice question at the very end of all of this, then it creates a potential of an inconsistent verdict, where somebody, i.e., the defense, may come back and say, well, wait a minute, you couldn't have found battery because later on down the road, you asked for malice and it didn't say what type of malice it is. . . .
[Defendants' Attorney]:	Judge, a solution -- ***well, evil or bad motive, which is included in the instructions, an easy solution, we could ask after each one, do you find that Trooper Lewis acted with malice. That might be the easiest solution. The issue now is, we could get an inconsistent verdict with this.***
[THE COURT]:	Well, ***you're actually basically saying we can get an inconsistent verdict both ways***. We can get an inconsistent verdict -- well, lots of permutations.
. . .	
[THE COURT]:	All right. ***Delete my suggestion to add the specific question with respect to actual malice. . . . Your exception to that is noted.***

(Emphasis added).

Moreover, the trial court understood the State's and Tpr. Lewis's objections. After their objections, it said, "[Y]ou're actually basically saying we can get an inconsistent verdict both ways." The trial court simply (and erroneously) disagreed with the State's and Tpr. Lewis's suggested method of avoiding it.

Lt. Gaskill next argues that the State and Tpr. Lewis waived their objection to the inconsistency of the jury's verdict "because they failed to object and request that the jury address this purported issue prior to the jury being discharged, and it was not raised in appellants' post-trial motions." To support this argument, Lt. Gaskill points to *Francis v. Johnson*, 219 Md. App. 531, 559 (2014), but this case is factually distinct from the

situation here. In *Francis*, plaintiff, a minor suing through his parents, alleged constitutional and common law torts (false imprisonment, battery, and assault) against three police officers with the Baltimore City Police Department. *Id.* at 537. For one officer, Detective Hellen, the jury found no liability as to any common law torts but did find him liable for the constitutional torts that plaintiff alleged, violations of Articles 24 and 26 of the Maryland Declaration of Rights. *Id.* at 559. After appellants did not challenge what they perceived to be inconsistency in the verdict in the circuit court, we declined to address it, explaining, "[i]n the context of inconsistent verdicts, it is clear that the failure to raise the issue in the circuit court constitutes a waiver of the right to raise the issue on appeal." *Id.*

Here, by contrast, the State and Tpr. Lewis did "raise the issue" of a possibly inconsistent verdict in the trial court. Specifically, the State and Tpr. Lewis objected to the possibility of an inconsistent verdict twice through their objections to the verdict sheet. To be sure, after the jury returned its irreconcilably inconsistent verdict, the State and Tpr. Lewis did not ask that the case be sent back to the jury for clarification. Nonetheless, *Francis* does not hold that the only way a civil litigant can preserve their challenge to an irreconcilably inconsistent verdict is to ask that the case be returned to the jury. Indeed, since *Francis*, we have overturned an irreconcilably inconsistent civil verdict even though the appellant did not ask that the matter be returned to the jury before it was discharged and instead raised the issue to the trial court in a post-trial motion. *See, e.g., Md. Prop. Mgmt., LLC v. Peters-Hawkins*, 249 Md. App. 1, 42 (2021) (citing *S.*

Mgmt. Corp. v. Taha, 378 Md. 461, 475 (2003) (both cases holding that the party had not waived their challenge as to inconsistent verdicts where they had failed to object to the verdict before the jury was discharged because a competent attorney in a civil case would not have been put on notice of the need to do so). Accordingly, even though the State and Tpr. Lewis did not ask that the case be returned to the jury for further deliberation, their challenge to the jury's irreconcilably inconsistent verdict was preserved by other means, here by objecting to the verdict sheet that produced it.[17]

Lt. Gaskill also argues that the jury's verdict was not inconsistent. She argues that a reasonable jury could have "conclude[d] that the State was negligen[t] and [Tpr.] Lewis acted with gross negligence because the State prevented [Tpr.] Lewis from engaging in this conduct." She adds that the State and Tpr. Lewis "make[] no argument that the jury acted contrary to the instructions." We are unpersuaded.

The inconsistency that the State and Tpr. Lewis focus on does not arise from the jury's findings of gross negligence by Tpr. Lewis and negligence by the State. It arises instead from the simultaneous award of punitive damages against Tpr. Lewis and compensatory damages against the State. As above, in order to award punitive damages against Tpr. Lewis, the jury must have been convinced that he acted with actual malice,

[17] To the extent that Lt. Gaskill suggests that the only way for the State and Tpr. Lewis to have preserved their challenge to the irreconcilable inconsistency of the verdict was through a post-trial motion, we decline to address her suggestion because she did not cite legal authority to support it. *See* Md. Rule 8-504(a)(6) (requiring that a brief contain "[a]rgument in support of the party's position on each issue"); Md. Rule 8-504(c) (permitting appellate court to "dismiss appeal or make any other appropriate order" for noncompliance).

but if he did, the State could not be liable for Tpr. Lewis's conduct. Lt. Gaskill's new theory for how the jury could have found gross negligence and negligence, even if that is what the jury did, does not explain how it could have found actual malice and negligence.

Lt. Gaskill next argues that because the jury was instructed about actual malice, the verdict sheet was not defective for having omitted a question about whether Tpr. Lewis acted with actual malice. To be sure, Maryland does not require that a verdict sheet repeat the trial court's jury instructions regarding the need for actual malice in determining whether punitive damages should be assessed. *Fraiden v. Weitzman,* 93 Md. App. 168, 208 (1992) ("The verdict sheet need not repeat the oral instructions given to the jury. The jury heard the instructions, and presumably utilized them properly in determining that punitive damages should be assessed against appellants.").

Here, however, the trial court's verdict sheet omitted more than an instruction about the need for actual malice to support punitive damages. Additionally, the verdict sheet did not tell the jurors to skip consideration of damages against the State if it found gross negligence or actual malice on the part of Tpr. Lewis. Nor did it tell the jury to skip consideration of damages against Tpr. Lewis if it found him merely negligent. The absence of such instructions from the trial court's verdict sheet, and the jury instructions, is what produced the irreconcilably inconsistent verdict here.

CONCLUSION

We hold that the trial court reversibly erred both by instructing the jury on freedom of speech and using a verdict sheet that allowed for an irreconcilably

inconsistent verdict. We therefore vacate the judgments of the circuit court and remand this case for further proceedings not inconsistent with this opinion.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.