Circuit Court for Baltimore City
Case No. 24-C-17-006410

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0164 & 0642

September Term, 2021

STATE OF MARYLAND, *ET AL.*

v.

DAQUAN M. WALLACE, *ET AL.*

Graeff,
Nazarian,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 23, 2022

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

On December 18, 2014, while Daquan Wallace was being detained before trial at the Baltimore City Detention Center, a group of fellow inmates attacked him. He suffered a traumatic brain injury and was left severely and permanently injured. This appeal and cross-appeal arise from the lawsuit[1] he filed against the State of Maryland, the Department of Public Safety and Correctional Services, and the Division of Pretrial Detention and Services (collectively "the State"[2]) in the Circuit Court for Baltimore City. Mr. Wallace asserted various state law claims and proceeded to trial on his claim under Article 24 of the Maryland Declaration of Rights; a "*Longtin*-type[3] Unconstitutional Pattern or Practice of Improper Conduct" claim; a retaliation claim under Article 40 of the Maryland Declaration of Rights; and common law claims of assault; battery; and negligent hiring, retention, training, and supervision. At the close of Mr. Wallace's case, the State moved for a directed verdict and the court denied the motion.

The jury found that (1) the State violated Mr. Wallace's rights under Article 24 of the Maryland Declaration of Rights; (2) the State violated his rights under the Maryland Declaration of Rights by engaging in unconstitutional customs, policies, or practices; (3) the State trained or supervised its employees negligently; and (4) the State's negligence directly and proximately caused his injuries. The jury found that Mr. Wallace had *not*

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[1] Mr. Wallace's mother, Nicole Wallace, is a co-plaintiff. For clarity, and because all of the claims arise from Mr. Wallace's injuries, references in this opinion to Mr. Wallace's claims encompass both of theirs.

[2] Mr. Wallace did not name any individual defendants, but chose to pursue his claims against individual state employees in federal court.

[3] *Prince George's Cnty. v. Longtin*, 419 Md. 450 (2011).

proven that the State violated Ms. Wallace's freedom of speech under Article 40 or that it had "acted in concert to cause physical harm" to him. The jury awarded Mr. Wallace $10 million in non-economic damages for the State's violation of his constitutional rights and $15 million in non-economic damages for the State's negligence. The circuit court entered judgment in favor of Mr. Wallace and against the State for $25 million, but later reduced the judgment to $200,000 in accordance with the Maryland Tort Claims Act ("MTCA"). However, the judgment was amended back to the full amount so the parties could brief the issue of damages. The parties agree that the current enrolled judgment awards $25 million.

Both the State and Mr. Wallace appealed. Mr. Wallace's appeal seeks to avoid the application of the $200,000 MTCA damages limit to his claims. The State's cross-appeal attacks the jury's verdict on legal and sufficiency of the evidence grounds and also seeks to vacate the judgment so that we can apply the $200,000 MTCA damages limitation.

We hold that the trial court submitted the *Longtin* claim to the jury properly and that there was sufficient evidence for the jury to find the State liable for both the *Longtin* claim and the negligent training and supervision claim. We hold, however, that the trial court failed to instruct the jury properly on the Article 24 claim and that Mr. Wallace's recovery is limited to $200,000 under the MTCA. Because Mr. Wallace's recovery is maxed out at $200,000 with his negligence claim, it would serve no purpose to re-try the Article 24 claim, so we affirm in part, reverse in part, and remand with instructions for the trial court to reinstate the judgment for Mr. Wallace in the amount of $200,000.

I. BACKGROUND

A. Events During Mr. Wallace's Detention.

On September 3, 2014, Mr. Wallace was committed to the Baltimore City Detention Center ("BCDC") while awaiting trial on non-violent charges. There is no dispute that the BCDC was rife with gang activity during this time period; every correctional officer or supervisor who testified about their experience working in BCDC confirmed that gang violence and crime were common there, and it eventually closed in 2016. Mr. Wallace was housed initially in the Jail Industries ("J.I.") Building within BCDC, a dormitory-style building. J.I. held fewer violent offenders and primarily housed inmates with a lower security classification, which allowed inmates more freedom of movement and the ability to watch TV and move around in the dorm. The Men's Detention Center ("MDC"), another building within the BCDC, was generally considered more secure but also more dangerous.

While in custody, Mr. Wallace frequently telephoned his mother, Nicole Wallace. On occasion, he used the phone privileges of other detainees to call her. He repeatedly told his mother that people were trying to get him to join gangs and that he was afraid for his life.

On December 2, 2014, Mr. Wallace appeared at his bail review hearing with an injured, blackened eye. Ms. Wallace was in attendance that day, observed her son's appearance, and immediately called the jail to speak to a supervisor or warden about his injury. She eventually was able to contact Lieutenant Tamara Patterson, the J.I. housing supervisor, who told her that she would have Mr. Wallace checked out by the medical unit. Ms. Wallace also reported to Lieutenant Patterson that Mr. Wallace had been assaulted in

the courthouse "bullpen" while awaiting his hearing. Worried about his safety, Ms. Wallace requested her son be transferred to a different housing unit.

In fact, Ms. Wallace made numerous calls to Lieutenant Patterson and Warden Betty Johnson to report earlier attacks on Mr. Wallace and to express fear for his safety. Ms. Wallace told Lieutenant Patterson that Mr. Wallace was afraid for his life and "afraid that people were trying to get him to join gangs and stuff." She told the Lieutenant that Mr. Wallace was being threatened "that if he opens his mouth, be moved, or tell anything, they was going to kill him. They was going to take his life."

On December 3, 2014, the day after Mr. Wallace appeared injured in court, Lieutenant Patterson, along with Sergeant James Henderson, brought Mr. Wallace into an office and questioned him privately about his mother's safety concerns; his mother was on the phone for a portion of the meeting. The State asserts that Mr. Wallace denied fearing for his safety and told them "I don't want to go anywhere. I like it over here." Mr. Wallace wrote a statement to that effect and told his mother the same in the presence of officers over the phone. Ms. Wallace recalled the conversation being about Mr. Wallace's eye and did not recall him denying protective custody. His written statement was never recovered, but Lieutenant Patterson's memorandum about the interaction was read to the jury.

The State alleges that at this point, "Mr. Wallace's conduct in his dormitory deteriorated . . . ." On December 18, 2014, Lieutenant Patterson, Sergeant Lisa Portee, and Officer Jackens Rene all worked the morning shift at the J.I. building where Mr. Wallace was housed. According to Sergeant Portee, Lieutenant Patterson directed her to allege in

paperwork transferring Mr. Wallace from J.I. to MDC that Mr. Wallace was extorting other inmates for commissary and phone privileges.

This transfer violated the State's official policies. There was no official report or write-up of the alleged misconduct by Mr. Wallace before the transfer that could have justified putting him in administrative segregation, and the transfer form was missing the required signature of Lieutenant Patterson or another supervisor. The transfer form also contained the illegible signature of the traffic officer involved in the transfer. Since the form was missing the required approval and signatures, Lieutenant Patterson would have been subject to discipline and Officer Rene was not supposed to accept Mr. Wallace. Additionally, Officer Rene failed to record Mr. Wallace's arrival in the section logbook.

Shortly after 7:00 on the evening of Mr. Wallace's transfer, the rest of the tier was taken to dinner. To release inmates for meals, Officer Rene would use a lockbox to open all the cell doors (either individually or all at once), then would secure each cell individually. The lockbox could not close cell doors. A team of approximately ten officers would come to assist moving inmates to and from their cells to the cafeteria during mealtimes. Officer Rene alone was responsible for ensuring each cell was closed and locked. The only way inmates could have gotten out of cells or into Mr. Wallace's cell was through Officer Rene using his key.

The policy required all detainees to go to dinner and forbade them from eating in their cells. During dinner, cell doors were to remain closed and locked. Officer Rene admitted that he allowed the detainees in cells 3, 47, and 48 to remain while the others went

to dinner because, in practice, officers did not force inmates to go to meals. Officer Rene claimed that Mr. Wallace went to dinner, but Mr. Wallace's new cellmate, Joseph Beatty, claimed that Mr. Wallace remained in his cell and was not at dinner. When securing cells, the empty ones are put on standby so they open from the lockbox when inmates return. Because cell 47/48 was occupied, it would have stayed locked the entire time.

Office Rene claimed that after dinner, he let the inmates back into their cells, locked everything back up, and recorded two security rounds in his logbook as "safe and secure[.]"During these security rounds, the officer's job is to look into each cell and make sure there is no mischief. The doors have bars and the cells are designed so there is no place to hide and officers can look in and make sure everything is in order. Mr. Beatty, however, returned from dinner and found Mr. Wallace unconscious on his top bunk in the cell. Mr. Beatty immediately reported this to a nearby officer.

Mr. Wallace was transported to the medical unit where he was "found to have trauma to the right side of his head in the facial area, his bottom lip and the back of his head contained a section of blood[.]" Mr. Wallace, previously a healthy man in his twenties, was "rendered mute and triplegic with catastrophic brain damage[,]" and he requires 24-hour care. He lives with significant cognitive limitations, including missing memories, and he recalls nothing of the day of the attack. He was diagnosed with a severe traumatic brain injury.

During the State investigation that followed, investigators found clothing with blood on them in cell 47/48, the same cell Officer Rene admitted that he allowed to stay behind

in violation of policy. Mr. Wallace was never responsive enough to be interviewed during the investigation and his attackers were never identified.

B. Pleadings And Trial.

1. The complaint

On December 15, 2017, Mr. Wallace filed suit against the State of Maryland, the Department of Public Safety and Correctional Services, and the Division of Pretrial Detention and Services in the Circuit Court for Baltimore City. This case named only the State and its agencies and sought only noneconomic damages; a companion federal case was filed against the individual officers seeking medical and economic damages. *See Wallace v. Moyer*, No. 17-CV-03718 (D. Md. filed Dec. 15, 2017).

Count I of Mr. Wallace's complaint alleged that "Defendants' agents or employees engaged in an activity that violated Plaintiff's rights as protected under [Articles 24 and 26 of] the Maryland Declaration of Rights, violating Mr. Wallace's Due process rights and right to be free from excessive force." The actions included "facilitating the attacks on Mr. Wallace, encouraging and failing to prevent the brutal attacks against Plaintiff, the covering up of the attacks against Plaintiff after their occurrence, and the failure to render aid to Plaintiff despite the means and duty to do so . . . ." Mr. Wallace alleged more specifically that he had "a right to be free from the use of excessive and unnecessary physical force on his person by correctional officers. This right was denied to Plaintiff when Defendants' agents or employees knowingly allowed the brutal attacks by other correctional inmates against Plaintiff without legal cause, excuse or justification."

Count IV alleged a "*Longtin*-type Unconstitutional Pattern or Practice of Improper Conduct" claim. In that count, Mr. Wallace alleged that the State "maintained a policy of unconstitutional and unlawful supervision and abuse of authority[,]" specifically by "participating in gang-related criminal activity, deprivation of constitutional rights . . . [and] deprivation of liberty and freedom from abuse of power . . . ." He alleged that the State "instituted and maintained formal and informal customs, policies, and practices that foster, promote and encourage Correctional Officers to violate the rights of citizens."

Count V alleged negligent hiring, retention, training, and supervision. In that count, Mr. Wallace alleged that the State failed to use proper care in selecting, supervising, disciplining, and/or retaining employees.

Mr. Wallace also alleged violations of Articles 16, 25, and 40 of the Maryland Declaration of Rights, common law negligence, civil conspiracy, assault, and battery. There was no allegation of malice or gross negligence.

2. *Trial testimony*

At trial, Mr. Wallace called various State officers to testify as adverse witnesses. Major Karen Moore's deposition was read to the jury. She testified as the "[a]cting security chief" and a shift commander at BCDC when Mr. Wallace was attacked. She testified that "officers working with gangs in BCDC" was "a problem before I got there." She stated there were "situations where officers would allow inmates to assault each other" from 2011 through 2014 and the problem was "pretty bad[.]" When she saw problems with officers cooperating with inmates, she "would always report them up the chain of command[,]"

sometimes making ten to twelve reports a day. Nothing was ever done on these issues from higher-ups, she said; the best she could do in her supervisory capacity was hope to fire them for minor infractions or have them reassigned to different facilities. She stated that "[t]hey were all working together" and it was hard to know who was involved without "actually see[ing] them doing it in the act in order to really get them for their wrongdoings as far as they're working with the gang."

With regard to Mr. Wallace himself, Major Moore stated that she responded to the scene after receiving a report that Mr. Wallace was unresponsive. She agreed that the transfer form was void because it wasn't signed. She also agreed that the traffic officer's signature was not legible and therefore invalid. She stated that if Mr. Wallace had been extorting other inmates for phone and commissary privileges, someone should have completed a report; in fact, receiving a complaint like that and not reporting it was also a violation of procedure. She said that as the shift commander at the time, she would have denied a request to transfer Mr. Wallace had one been presented to her—she would have placed Mr. Wallace in a segregated cell until he had a disciplinary hearing on the allegations.

Major Moore further testified that all inmates were required to go to meals whether they wanted to or not. She explained that "[i]t was for safety reasons especially on my shift. I thought that everyone should leave out because if something happened it's hard to see at night who's on the sections. It's hard to see outside. So all of the staff would escort the offenders to and from chow." The only exception was if, for medical reasons, an inmate

couldn't make it down four steps to the dining hall. Major Moore testified she "never had any problems or issues with Mr. Wallace" and, "the entire time he has been at the facility he was never a problem or an issue with me on my shift."

Lieutenant Patterson supervised the security division at BCDC during Mr. Wallace's detention. She testified that there were "problems with illegal activity in the prison[,]" where "prisoners cooperated with guards and guards cooperated with prisoners to perform criminal conduct[.]" Lieutenant Patterson admitted that Ms. Wallace told her that Mr. Wallace was afraid to come forward because he was being attacked by inmates affiliated with gangs. She indicated that her hands were tied, that she couldn't place Mr. Wallace in protective custody if he wouldn't sign an inmate statement, but admitted that some inmates fear retaliation if they turn people in or let you know they're being threatened. She also admitted Ms. Wallace told her that Mr. Wallace "had informed her that if he moves he'll be labeled as a snitch and they'll get him wherever he goes."

Lieutenant Patterson gave conflicting testimony about whether she requested or refused to put Mr. Wallace in protective custody. Indeed, Lieutenant Patterson gave a lot of conflicting testimony. She couldn't recall specifically whether Mr. Wallace was extorting inmates, assaulting, or stealing, but she testified that the form must be correct if she signed it (*i.e.*, that he was in fact extorting inmates and being disrespectful to officers). She couldn't request administrative segregation for him (rather than protective custody) "because he didn't do any type of infraction . . . ." She testified that "several inmates were complaining to the officer" about Mr. Wallace bullying for commissary and phone

privileges on the transfer form, so she decided to transfer him "to a more secure environment" even though she stated she had no control over where he was transferred. She said later that she did request segregation to "[w]hoever the duty captain was that day" because "I always ask for segregation[,]" but she explained there wasn't a bed available. Lieutenant Patterson stated that she was never able to verify everything that Ms. Wallace said in their phone conversations, but she did observe personally that Mr. Wallace had an eye injury that caused her to send him for medical treatment. And she agreed that his injuries would have been readily observable by other corrections officers who came face-to-face with detainees.

Sergeant Portee worked in the J.I. building while Mr. Wallace was housed there. She testified that she was aware, as a supervising correctional officer, that there sometimes were repercussions from other inmates for inmates who complained about being attacked, threatened, or mistreated. She stated that she filled out Mr. Wallace's transfer form as instructed by Lieutenant Patterson, her immediate supervisor. She agreed that inmates typically were not moved unless there was a serious incident or it was their second or third disciplinary offense. And for an alleged extortion-type rule violation, there should have been a ticket written up on Mr. Wallace, but she did not remember any complaints or concerns about Mr. Wallace at all.

Sergeant Portee also testified that when she reported misconduct of other correctional officers she suffered "negative repercussions[,]" including "the security chief called me yelling at me on the phone[,]" and she was transferred the next day from the J.I.

building to the main jail. She added that her reports of misconduct were not received politely or professionally.

Warden Johnson testified that she was transferred to the facility in October 2014, shortly before the attack, and she was aware "[t]here had been incidents" involving inmates and correctional officers cooperating to do unlawful things that led to investigations. Warden Johnson was responsible for "report[ing] . . . to Headquarters" certain incidents, but to her knowledge none of the employees she reported to Headquarters were ever disciplined or terminated for the misconduct she reported. Warden Johnson agreed that Officer Rene should not have accepted Mr. Wallace and should have been subject to discipline for accepting him with the unsigned transfer form. She admitted that Lieutenant Patterson also failed to follow normal protocol in requesting the transfer.

Finally, Officer Rene, the correctional officer responsible for Mr. Wallace at the time of the attack, testified. He worked the morning shift at the J.I. building and the evening shift at MDC, on both ends of Mr. Wallace's transfer. Officer Rene explained that he called the Traffic Unit to verify whether he was supposed to receive Mr. Wallace. They asked for a bed number and Officer Rene wrote the bed number on the form that he gave to them (bed 35). He admitted this was unusual for transfers. But although the section and cell assignment was in his handwriting on the transfer form, he denied that he chose where Mr. Wallace was assigned.

Offcer Rene recorded that beds 3, 47, and 48 did not leave for dinner, but he was not disciplined for allowing them to stay back in violation of policy and he was never

spoken to about the fact that he allowed them to stay back. He stated that he was never advised that he had to force inmates to go to meals. He explained that beds 47 and 48 were locked the whole day; they were secured and he was the only person who had the key to let anyone out of those cells. He had no explanation for how bloody clothes were later found in those cells.

3. The State's motion for directed verdict

At the close of Mr. Wallace's case, the State moved for directed verdict on Count I, the Article 26/24 count. The trial court granted the State's motion as to Article 26, finding that the facts did not constitute an unlawful seizure, so that count proceeded only as an Article 24 claim. The State also argued there was no evidence of negligent training and supervision and that it was legal error to submit the *Longtin* claim to the jury. The court denied the State's motion as to each.

4. The Article 24 jury instruction

At the close of the evidence, the parties disputed the jury instruction for the Article 24 constitutional claim. The State proposed two alternative jury instructions: first, an instruction that "[t]he Defendants violated Daquan Wallace's Article 24 rights if they were deliberately indifferent to his health or safety[,]" citing *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). This test has objective and subjective components and requires a Plaintiff to prove both: (1) "a serious deprivation of his rights in the form of a serious or significant physical or emotional injury, or a substantial risk thereof[,]" and (2) that the Defendant "[k]new of and disregarded an excessive risk to a detainee's health and safety."

Alternatively, the State proposed an instruction that reflected language in *Smith v. Bortner*, 193 Md. App. 534, 553–55 (2010), which states that Article 24 liability arises when the State "inflict[s] any form of punishment upon a pretrial detainee that is not an incident of some other legitimate government purpose."

Mr. Wallace argued primarily that the deliberate indifference standard did not apply because he was a pretrial detainee rather than a convicted inmate. In fact, counsel argued that their "proposed instruction just says under 24 and 26 there's a duty to protect detainees from violence at the hands of other detainees. That is utterly uncontested and uncontestable." Mr. Wallace asserted that "under Article 24 and 26 there's a duty to protect inmates from violence at the hands of other inmates. And if you find they failed to protect, then there's a violation." As noted above, the trial court allowed Mr. Wallace's Article 24 claim to proceed, and otherwise agreed with Mr. Wallace that his Article 24 constitutional claim compelled an objective test. The court ultimately instructed the jury that detention center employees had a duty to protect detainees from violence at the hands of other detainees and that the defendants' actions must be measured from the perspective of a reasonable correctional officer on the scene at the time:

> The elements of a claim for a violation under the Maryland Declaration of Rights, Maryland's constitution are as follows: that the Defendants performed acts that operated to deprive a Plaintiff of one or more of the Plaintiffs' rights under the Maryland Declaration of Rights as defined and explained in these instructions and that the Defendants' acts were the proximate cause of the damages sustained by the Plaintiff.
>
> The reasonableness of a Defendants' actions must be judged objectively from the perspective of a reasonable correction officer in a position of the Defendant at the time. Factors that

> should be considered in determining reasonableness include what the officer believed at the time of the incident, the calculus of the reasonableness must embody allowance for the fact that correctional officers are often forced to make split-second judgments in circumstances that are uncertain. Therefore, in examining Plaintiffs' claims, you should look at the situation from the perspective of the Defendant on the scene, taking into consideration all the circumstances that you find to have existed at the time as the Defendant knew them.
>
> As the finders of fact in this case when considering whether the actions of the Defendant were reasonable or unreasonable and excessive, you should consider all the testimony and the evidence in this case and it is your task to decide the facts of the case where there are competing or disputed renditions of the facts.
>
> . . . Under Article 24 of the Maryland Declaration of Rights, detention center officials have a duty to protect detainees from violence at the hands of other detainees. If you find that the Defendants[] failed to protect the Plaintiff, Daquan Wallace from violence at the hands of other detainees, then the Defendants have violated the Plaintiffs' rights.

5. The verdict

First, the jury found "by a preponderance of evidence that [the State] violated Plaintiff, Daquan Wallace's rights under Article 24 of the Maryland Declaration of Rights by failing to protect him from violence by another detainee[.]" *Second*, the jury found that Mr. Wallace had proved his *Longtin* claim, finding the State had "engag[ed] in unconstitutional customs, policies, or practices in violation of the Maryland Declaration of Rights[.]" *Third*, the jury found that the State "negligently trained or supervised its employees and as a result those employees were the direct and proximate cause of any injuries" to Mr. Wallace and "the negligence of [the State] was a direct and proximate cause" of Mr. Wallace's injuries. The jury found that Mr. Wallace had not proven that the

State had "acted in concert to cause physical harm" to him. The jury also found insufficient evidence of the Article 40 retaliation claim. The jury awarded Mr. Wallace $10 million for the State's violation of Mr. Wallace's constitutional rights and $15 million in non-economic damages for the State's negligence.

C. Post-Verdict.

Both parties filed post-judgment motions. The State filed a motion for new trial, for judgment notwithstanding the verdict ("JNOV"), and, in the alternative, to reduce judgment under the MTCA. The State sought a new trial on the basis that *Longtin* claims cannot be brought against the State. The State also "sought a new trial on the additional ground that the court's jury instructions contained no standard to guide the jury in determining whether Mr. Wallace had demonstrated that State personnel had violated his rights under Article 24 of the Declaration of Rights." Alternatively, the State sought JNOV on the Article 24 claim because even if instructed properly, there was insufficient evidence of liability. The State also requested an order entering judgment in the amount of $200,000 in conformance with the MTCA.

Mr. Wallace also filed a motion arguing that the $200,000 damages limitation under the MTCA was a "constitutionally inadequate" remedy under Article 19 of the Maryland Declaration of Rights. Mr. Wallace requested the trial court "enter whatever judgment which the court deems minimally constitutionally adequate[.]"

After a hearing, the trial court denied the State's motion that *Longtin* "should not have been submitted to the jury in the instant matter." The court noted that, "[f]or reasons

articulated by the Plaintiff," the *Longtin* claim was properly submitted the jury. The court also discussed the application of the MTCA to the matter, holding that the State's liability was limited to $200,000:

> After the verdict for [Mr. Wallace] was returned in this matter, this Court issued an Order limiting [Mr. Wallace's] award to that which is allowed under [the MTCA]. That such an Order was entered in that regard is noted on the docket sheet maintained by the Clerk's Office, but the actual Order effecting that end is missing from the court file itself.
>
> Per the law in effect for purposes of this matter, Section 12-104 of State Government Article of Maryland's Annotated Code, the State of Maryland's immunity from a tort action is waived, but its liability is limited to an amount that cannot exceed $200,000.00. [Mr. Wallace] has suggested certain legal authorities for the proposition that this Court is empowered to award an amount greater than that allowed by the above-cited statute. However, this Court does not believe it has such power. Accordingly, [Mr. Wallace's] Motions to Reconsider Application of the MTCA . . . are DENIED.
>
> For the foregoing reasons, that portion of [the State's motion] dealing with its Motion to Reduce Judgment is rendered MOOT.

However, on appeal, the parties agree that the docket reflects the amount of the current enrolled judgment as $25 million.

Both parties timely appealed and the cases were consolidated. We supply additional facts as needed below.

II. DISCUSSION

This appeal and cross-appeal present four issues for our review:[4] *first*, whether a *Longtin* claim may be brought against the State and whether the jury's verdict on that claim

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[4] Mr. Wallace phrased his Questions Presented as follows:

> 1) Does a trial judge have discretion to award the minimum figure above the cap, but below the jury's award, which is required to avoid violating the guarantee of a remedy under Article 19 of the Maryland Declaration of Rights? Alternatively, should the full jury verdict be entered given that the cap under the Maryland Tort Claims Act is unconstitutional as applied in this case?
>
> 2) Is the $200,000 cap under the Maryland Tort Claims Act unconstitutional as applied in a case in which it would mean that a catastrophically injured victim received nothing at all, or a drastically inadequate remedy, *i.e.*, the equivalent of almost no compensation?
>
> 3) Whether the Maryland Tort Claims Act cap applies to direct claims against the State for violations of the Maryland Declaration of Rights?

The State phrased its Questions Presented as follows:

> 1. Does sovereign immunity limit the liability of the State to $200,000.00, which was the limit in § 12-104(a) of the State Government Article when Mr. Wallace's cause of action arose?
>
> 2. Did the circuit court incorrectly instruct the jury on the elements of a claim of failure to protect an inmate from harm under Article 24, where that claim requires a plaintiff to demonstrate deliberate indifference to a serious risk of harm, but the court instructed the jury that corrections personnel violated Article 24 if they "failed to protect . . . [Mr.] Wallace from violence at the hands of other detainees" without regard to any standard for determining the constitutionality of their actions?
>
> 3. When viewed under the proper standard for determining

was supported by substantial evidence; *second*, whether the jury's verdict of negligent training and supervision was supported by substantial evidence; *third*, whether the jury instruction on the Article 24 failure to protect claim was legally sufficient; and *fourth*, whether the MTCA limits Mr. Wallace's recovery against the State to $200,000.

We review a trial court's decision whether to give a jury instruction under the abuse of discretion standard and will overturn a jury verdict and award a new trial if the court's decision "rises to the level of prejudicial error." *CSX Transp., Inc. v. Pitts*, 430 Md. 431, 458 (2013). When reviewing the trial court's denial of a motion for judgment

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the constitutionality of the actions of State personnel under Article 24, was the evidence legally insufficient, where correctional officers were not deliberately indifferent to any risk of serious harm to Mr. Wallace?

4. Did the circuit court incorrectly apply *Longtin v. Prince George's County* to the State, where that case recognizes a cause of action for a plaintiff injured by a pattern or practice of unconstitutional conduct of a local government, a holding that has no application to the State?

5. Assuming a *Longtin* claim may be brought against the State, was the evidence legally insufficient for a reasonable factfinder to conclude that the State had engaged in a "pattern or practice" of unconstitutional conduct, where Mr. Wallace failed to demonstrate any pattern or practice of deliberate indifference by corrections personnel to a serious risk of harm presented to inmates by other inmates?

6. Was the evidence presented at trial insufficient to support the jury's verdict on Mr. Wallace's claim of negligent training and supervision, where Mr. Wallace failed to demonstrate the nature of any deficient training or supervision of the correctional officers responsible for the care and custody of Mr. Wallace, and how any alleged negligence was the proximate cause of his injuries?

notwithstanding the verdict, we review questions of law *de novo*. *CR-RSC Tower I, LLC v. RSC Tower, I, LLC*, 202 Md. App. 307, 333 (2011). With respect to questions of fact, we "affirm the trial court and uphold the jury's verdict as long as it is supported by legally sufficient evidence." *Id.* "We will find error in a denial of a motion for judgment or JNOV if the evidence 'does not rise above speculation, hypothesis, and conjecture, and does not lead to the jury's conclusion with reasonable certainty.'" *Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. 496, 503 (2011) (*quoting Scapa Dryer Fabrics, Inc. v. Saville*, 190 Md. App. 331, 343 (2010); *Bartholomee v. Casey*, 103 Md. App. 34, 51 (1994)).

A. The Trial Court Properly Submitted The *Longtin* Pattern Or Practice Of Unconstitutional Conduct Claim To The Jury And There Was Sufficient Evidence For The Jury To Find The State Liable.

1. Whether Longtin *applies to the State*

The first issue we consider is whether Maryland law recognizes a "pattern or practice" constitutional claim against the State and, if so, whether the evidence here was sufficient to support such a claim. The State makes two legal arguments with respect to the application of a *Prince George's County v. Longtin*, 419 Md. 450 (2011), claim against the State:[5] *first*, that by its holding it is simply not recognized as a cause of action against the State; and *second*, that such a claim is barred by sovereign immunity. On these bases, the State insists the trial court erred in submitting this claim to the jury.

[5] Mr. Wallace argues that the State failed to preserve this issue for failure to state its objection with particularity at the close of all the evidence under Rules 2-532 and 2-519. But the transcript reflects the State's routine renewal of its motion for judgment at the close of all the evidence and we're satisfied this was sufficient to preserve the issue for appellate review. *See Gables Constr. Inc. v. Red Coats, Inc.*, 468 Md. 632, 647 (2020).

First, we agree with the trial court and Mr. Wallace that there is nothing in the language of or principles underlying *Longtin* that limits it to claims against municipalities and precludes claims against the State. In *Longtin*, the plaintiff, Keith Longtin, was accused wrongfully of raping and murdering his wife. *Id.* at 459. He was arrested and interrogated by members of the Prince George's County Police Department for more than thirty-six hours and imprisoned for over eight months, during which time the police department obtained exculpatory DNA evidence and evidence of a serial rapist in the area but did not inform him. *Id.* at 457. At issue was whether Maryland law would recognize a "*Monell*-type" claim based on an unconstitutional "pattern or practice." *Id.* at 458. "*Monell*" is *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978), in which the U.S. Supreme Court held that a municipality could be liable under 42 U.S.C. § 1983 for "caus[ing]" unconstitutional actions of its employees through poor training or policies. *Monell* claims were limited to claims directly against municipalities due to application of federal law. Claims had to be made against municipalities directly because there is no *respondeat superior* liability under § 1983. *Id.* at 691. And the holding was "limited to local government units which are not considered part of the State for Eleventh Amendment purposes." *Id.* at 690 n.54.

Mr. Longtin's "pattern or practice claim" was directed at the then-police chief and the police department's Criminal Investigations Division. He alleged that they "'maintained a policy of unconstitutional and unlawful detention and interrogation' and that his arrest and detention were not 'a single isolated, accidental, or peculiar event[.]'"

419 Md. at 490. The Court of Appeals, analyzing *Monell*, stated that "Maryland's constitution requires more of its municipalities [than federal law does], and accordingly this Court has declined to shield municipalities from the unconstitutional acts of its officials." *Id.* at 493 (*citing DiPino v. Davis*, 354 Md. 18 (1999)). The Court acknowledged that, under the common law doctrine of *respondeat superior*, municipalities already are liable for civil damages resulting from state constitutional violations. *Id.* at 494 (*quoting DiPino*, 354 Md. at 51–52). Thus, the Court held, municipalities must also be liable for causing the misconduct of its employees:

> In *DiPino*, we held that, unlike federal law, Maryland's constitution imposed an affirmative obligation to avoid constitutional violations by its employees through "adequate training and supervision" and by "discharging or disciplining negligent or incompetent employees." Clearly, if Maryland imposes on local governments an obligation to prevent unconstitutional conduct by its employees, those same governments may not, with impunity, **cause** such conduct by unconstitutional policies or practices. A pattern or practice claim is merely a more egregious subset of the actions that are prohibited by Maryland constitutional law.

Id. at 495.

But "given the almost uniquely expansive reach of Maryland's constitutional tort remedy, where no official or local governmental immunity is possible . . . we think it highly unlikely that Article 24 contains *any* exemption from liability for an unconstitutional pattern or practice." *Id.* at 491–92 (*quoting Longtin v. Prince George's Cnty.*, 190 Md. App. 97, 130–31 (2010)) (emphasis added). Indeed, the Court of Appeals reiterated in *Longtin* that "we find our jurisprudence rife with evidence that Article 24 provides

protection to individuals against unconstitutional 'pattern or practices' of municipalities." *Id.* at 496. And as such, we agree with Mr. Wallace that the logic and analysis in *Longtin* isn't limited to claims against local governments, and the "pattern or practice" cause of action extends to State government for constitutional deprivations caused by its own poor training, supervision, or policies. The justifications for the Court of Appeals's endorsement and expansion of *Monell* claims weren't limited to municipalities. Under Maryland law, (1) there also is an affirmative obligation on State government to prevent the unconstitutional conduct of employees (here, under Article 24), (2) State government is answerable for the misconduct of its officers and employees (here, under the MTCA), and, therefore, (3) the State may not cause such misconduct by its own unconstitutional policies or practices. These claims are "merely a more egregious subset of the actions that are prohibited by Maryland constitutional law," *id.* at 495, and the State has to answer for them in the same fashion. *See, e.g.*, *Jones v. State*, 425 Md. 1, 17–18 (2012) (allowing a claim against the State for negligent training).

Second, the State argues that *Longtin* claims can't be brought against the State because it hasn't waived sovereign immunity with respect to these claims. Citing Maryland Code (1974, 2013 Repl. Vol., 2014 Cum. Supp.), section 5-522(a)(4) of the Courts and Judicial Proceedings Article ("CJ"), the State argues that it has waived sovereign immunity only with respect to tortious acts or omissions of State *personnel*, and "[t]he State has not waived its immunity from a claim that the state *itself* 'caused' an injury to a plaintiff as the result of an unconstitutional 'pattern or practice' allegedly maintained by the State."

But the State's argument is inconsistent with the MTCA and its non-liability provisions. The plain language of Maryland Code (1984, 1999 Repl. Vol.), section 12-104 of the State Government Article ("SG") allows direct claims against the State: "the immunity of the State and of its units is waived as to a tort action, in a court of the State . . . ." Subsection (b) provides that "[i]mmunity is not waived under this section as described under § 5-522(a) of the Courts and Judicial Proceedings Article." That corresponding section, CJ § 5-522(a) provides, "Immunity of the State is *not* waived under § 12-104 of the State Government Article for . . . [a]ny tortious act or omission of State personnel that . . . is not within the scope of the public duties of the State personnel[,] or . . . [i]s made with malice or gross negligence[.]" (Emphasis added.) Section 5-222 only functions to limit the immunity of State personnel from direct suit, meaning that State employees are still liable for acts outside the scope of their public duties or acts made with malice or gross negligence. *See Cooper v. Rodriguez*, 443 Md. 680, 723 (2015) (explaining the relationship between sovereign immunity and public official immunity and holding that, depending on the nature of the tortious conduct, "either the State or State personnel is liable . . ."). In fact, the MTCA itself grants state personnel this immunity by allowing plaintiffs to sue the State *directly* on a vicarious liability theory. *See Holloway-Johnson v. Beall*, 220 Md. App. 195, 210 (2014), *rev'd on other grounds*, 446 Md. 48 (2016) (*citing Ford v. Balt. City Sheriff's Off.*, 149 Md. App. 107, 119–20 (2002)) ("The [MTCA] . . . protects state government employees by granting them direct immunity from suit for acts or omissions committed within the scope of employment without actual malice. It allows

injured persons to sue the State on a vicarious liability theory.”).

A *Longtin* claim is a constitutional tort enforcing the Maryland Constitution, and sovereign immunity is waived for those. Maryland law is settled that the MTCA covers “tort actions generally” and “plainly appears to cover intentional torts and constitutional torts” so long as they are not subject to the exceptions in CJ § 5-522 discussed above. *Lee v. Cline*, 384 Md. 245, 256 (2004) (*quoting Ritchie v. Donnelly*, 324 Md. 344, 374 n.14 (1991)). “There are no exceptions in the [MTCA] for intentional torts or torts based upon violations of the Maryland Constitution. This Court has been most reluctant to recognize exceptions in a statute when there is no basis for the exceptions in the statutory language.” *Id.* (citations omitted).

Nor do we find persuasive the State’s federal cases on this point, which were decided primarily on Eleventh Amendment grounds. In *Rosa v. Board of Education of Charles County*, No. AW-11-02873, 2012 WL 3715331, at *9–10 (D. Md. Aug. 27, 2012), for example, the plaintiff alleged a “pattern or practice” claim against the Board of Education, accusing it of allowing unconstitutional sexual harassment to persist in her workplace. The case was decided on Eleventh Amendment grounds, although it also contained *dicta* regarding *Longtin* claims against the State:

> *Longtin* claims are essentially Maryland’s version of *Monell* claims. In *Monell*, the Supreme Court held that plaintiffs can sue municipalities for damages for constitutional deprivations where policies or customs of the municipalities cause the constitutional deprivations. The Monell Court expressly limited its holding to local government units which are not considered part of the State for Eleventh Amendment purposes.
>
> Against the backdrop of *Monell*, the *Longtin* court considered

> whether "Maryland law recognizes a 'pattern or practice' claim against a local government for unconstitutional policies." The court answered this inquiry affirmatively and, in so doing, concluded that the substantive standards underlying the claims diverged to an appreciable degree. Even so, the *Longtin* court neither stated nor intimated that plaintiffs could institute pattern or practice claims against state government agencies.
>
> In view of this authority, the Court dismisses Rosa's *Longtin* claim outright. It is well-settled in Maryland that the "Court of Appeals undoubtedly considers county school boards instrumentalities of the State rather than independent, local bodies." Accordingly, *Longtin*, which extends pattern or practice liability to local governments, is inapplicable on its face. Rosa argues that the policy considerations undergirding *Longtin* justify extending pattern or practice liability to state agencies. However, the Court deems it exceedingly unlikely that the Court of Appeals of Maryland would have ushered in such a radical change in legal landscape sub silentio. Therefore, the Court dismisses Count VIII of the Amended Complaint.

Id. (citations omitted). The district court properly dismissed the *Longtin* claim on Eleventh Amendment grounds, noting that "[t]he Monell Court expressly limited its holding to local government units which are not considered part of the State for Eleventh Amendment purposes." *Id.* at *9 (*citing Monell*, 436 U.S. at 691 n.54). And indeed, the MTCA does not waive sovereign immunity in federal courts. *See* SG § 12-103 ("This subtitle does not . . . waive any right or defense of the State . . . in an action in a court of the United States or any other state, including any defense that is available under the 11th Amendment of the United States Constitution . . . ."); SG § 12-104 (providing "the immunity of the State . . . is waived as to a tort action, *in a court of the State* . . .") (emphasis added). And the rest of the *Rosa* analysis, for the reasons stated above, is unconvincing. The other cases cited by the State were also decided on Eleventh Amendment grounds and relied on *Rosa* dicta to

bolster its order dismissing the *Longtin* claims. *See Reid v. Munyan*, No. WMN-12-1345, 2012 WL 4324908, at *5 (D. Md. Sept. 18, 2012) (discussing *Rosa* but dismissing for failure to plead facts supporting claim); *L.J. v. Balt. Curriculum Project*, 514 F. Supp. 3d 707, 714 (D. Md. 2021) (citing *Rosa* but explicitly dismissing "on common law sovereign immunity grounds"); *Gandy v. Howard Cnty. Bd. of Educ.*, No. GLR-20-3436, 2021 WL 3911892, at *12 (D. Md. Sept. 1, 2021).

2. Sufficiency of the evidence of Mr. Wallace's Longtin *claim*

The State argues alternatively that, even if the *Longtin* claim was submitted to the jury properly, the evidence is insufficient to support the jury's verdict. Again, we uphold a jury's verdict "as long as it is supported by legally sufficient evidence." *CR-RSC Tower I, LLC*, 202 Md. App. at 333. "Evidence is legally sufficient if there is 'some evidence, including all inferences that may permissibly be drawn therefrom, that, if believed and if given maximum weight, could logically establish all the elements necessary to prove' plaintiff's case." *Id.* (*quoting Starke v. Starke*, 134 Md. App. 663, 678–89 (2000)). The question here is whether there was sufficient evidence that the State caused the unconstitutional actions of its employees through poor training, supervision, or policies.[6]

[6] The trial court's instruction, agreed by the parties and not raised on appeal, specified that Mr. Wallace had to "establish a pattern of conduct which gives rise to the inference that an unconstitutional custom, policy or practice exists . . . ." We note that the jury's finding on the constitutionality of the State's conduct hinged necessarily on the improper instruction given on Mr. Wallace's Article 24 claim that we discuss below, *i.e.*, that the objective failure to protect Mr. Wallace from violence at the hands of other detainees constitutes a violation of his rights under Article 24. But because the State doesn't challenge the adequacy of the court's *Longtin* instruction, we analyze the claim against the appropriate legal standard and decline to consider whether the trial court's

The State argues that Mr. Wallace's *Longtin* claim fails because he didn't call any "experts to opine upon alleged unconstitutional correctional practices at BCDC, introduced no documentation of unconstitutional behavior or practices on the part of State employees, and offered no proof of other incidents in which a detainee was attacked by other detainees . . . ." The State asserts that a jail official's mere knowledge of long-term, ongoing problems within the jail does not amount to an unconstitutional pattern or practice.

Mr. Wallace responds that all his witnesses testified that for "*years* prior" "it was well known that guards cooperated with detainees to achieve unlawful ends" and that such cooperation did, in fact, involve inmate-on-inmate attacks. He contends that many reports were made but nothing was ever done about the corruption and conditions that plagued the jail, and that the failures to provide safeguards to protect detainees resulted in Mr. Wallace's injuries.

We agree with Mr. Wallace. In *Longtin*, the plaintiff established the "pattern and practice" primarily by eliciting testimony from officers. 419 Md. at 491. The Court of Appeals summarized the evidence it found sufficient to support the jury's finding:

> He called as witnesses his interrogating officers and elicited testimony regarding the illegal actions they took in arresting and interrogating him. He introduced evidence about the exculpatory DNA tests, and established that the officers did little, if anything, after learning he was excluded. This evidence was sufficient to support a verdict of constitutional deprivation in his case.

Id. at 497. He also introduced "multitudinous evidence that his experience was not an

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jury instruction on this claim was improper.

isolated incident[,]" which included:

> [E]vidence through Detective Herndon that sleep deprivation was a "tool" of investigation that he had been trained to use. Admitted into evidence was an interview and interrogation training manual of the Prince George's County Community Police Institute that told officers they could read a suspect his rights "or wait until after he admits." The manual stated that the interrogator should consider handcuffing an angry suspect to the wall "and let [him] sit a while." Officers were advised to "wait out" a passive suspect because "few people can keep it up." If a suspect "is so convincing that you are starting to believe him . . . [l]eave the room [and] [d]on't go back unless you re-fortify your conviction that he is guilty." Detective Kerry Jernigan testified that it was departmental policy that police did not necessarily have to take the suspect before a district court commissioner within 24 hours if the suspect was continuously providing information . . . .
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> ***
>
> He introduced evidence of lengthy interrogations of other individuals (of 60 hours and 72 hours); another dubious confession and erroneous incarceration; an official police training manual urging constitutionally questionable actions with respect to the conduct of interrogations, *Miranda* warnings, and the right to counsel, which individual officers appeared to have followed "by the book"; expert testimony regarding violations of commonly-accepted police practices, evidence of serial violations of multiple constitutional rights by a number of officers; and a blurring of the line between presumptive innocence and pre-determined guilt.

Id. at 497–98 (*quoting Longtin*, 190 Md. App. at 113–14). For his part, then, Mr. Wallace had to prove both that (1) he suffered a "constitutional deprivation in his case," and (2) "his experience was not an isolated incident." *Id.* at 497.

With respect to Mr. Wallace's constitutional deprivation, there was evidence that supervisors knew of threats to Mr. Wallace's safety and acted with deliberate indifference to the serious risk those threats posed to his safety. His mother testified that she made

numerous calls to the jail and spoke with both Lieutenant Patterson and Warden Johnson. She informed them that Mr. Wallace feared for his life. Lieutenant Patterson herself observed Mr. Wallace's injuries from a prior assault by other inmates while he awaited his bail-review hearing. The jury was entitled to infer that with this information in hand, Lieutenant Patterson and Sergeant Portee falsified allegations of disciplinary infractions against Mr. Wallace, in violation of policy and procedure, in order to move him to a more dangerous part of the jail, where he was attacked predictably.

There also is ample evidence that Mr. Wallace's constitutional rights were violated by Officer Rene's conduct. Officer Rene was both on the sending and receiving ends of Mr. Wallace's unusual and impermissible transfer. The transfer form suspiciously shows Officer Rene's handwriting on Mr. Wallace's cell assignment. Officer Rene acted contrary to policy in allowing inmates to remain in their cells during dinner, and he admitted that he was the only person who had the key to let anyone out of or into cells during the time of the attack. The evidence was sufficient to support a finding that Officer Rene acted with deliberate indifference to Mr. Wallace's risk of injury.

As for evidence that this constitutional deprivation was not an isolated incident, every State correctional officer who testified noted the crime and violence within the facility. Lieutenant Patterson, Warden Johnson, and Major Moore all testified that inmates and guards cooperated in criminal activity. Sergeant Portee testified that there were "repercussions" from inmates who complained about being attacked, threatened, or mistreated. Major Moore, the acting security chief, testified that officers allowed assaults

to occur, that they would even sometimes open doors to allow inmates to assault each other, referring to the problem as "pretty bad[.]" She testified that she was aware of situations where inmates were harmed as a result of guards cooperating with gang members. And she recounted that she sometimes reported as many as ten or twelve of those incidents a day.

Although Mr. Wallace did not call an expert to opine on the constitutionality of the ongoing practices at BCDC or introduce evidence of official unconstitutional policies, as the plaintiff in *Longtin* had, the admissions by State employees in this case were numerous and overwhelming. Giving maximum weight to this testimony, as required on appeal, we agree that Mr. Wallace met his burden by way of "multitudinous evidence that his experience was not an isolated incident . . . ." *Id.* at 497. The jury was entitled to believe that the customs and practices of jail officials resulted in an unconstitutional practice of officers' deliberate indifference to the serious risks posed to inmate safety.

B. There Was Sufficient Evidence To Support The Jury's Verdict Of Negligent Training And Supervision.

From there, the State argues that the evidence presented at trial was insufficient to support the jury's verdict of negligent training and supervision.[7] The Court of Appeals in *Jones v. State* laid out the test for "the tort of negligent selection, training, or retention": that "(1) the defendant owed a duty to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff suffered actual injury; and (4) the injury proximately resulted from the

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[7] Mr. Wallace again disputes that this issue was preserved under Rule 8-131(a). We find that it is because it was raised in the State's motion for a directed verdict at the close of Mr. Wallace's evidence.

defendant's breach." 425 Md. at 18 (*citing Horridge v. St. Mary's Cnty. Dep't of Soc. Servs.*, 382 Md. 170, 182 (2004)).

The State claims that the evidence did not show that "failures in training or supervision of correctional staff proximately caused harm to Mr. Wallace" because "[a]bsent from this case is any evidence that any supervisor had actual or constructive knowledge that a subordinate was either negligent or incompetent in connection with the detention of Mr. Wallace." The State's argument centers around the lack of a signature on the transfer form and the transfer itself as the breach of the State's duty to Mr. Wallace.

But as with his *Longtin* claim, Mr. Wallace can point to testimony that established that the State failed to supervise or train its employees properly:

- The Warden and "Headquarters" were aware for years of guards cooperating with inmates to achieve unlawful ends, including attacks, and although they conducted investigations, they otherwise took no steps to address the problem.
- There was only one guard on the floor where Mr. Wallace was attacked despite the fact that it housed more dangerous detainees.
- Warden Johnson and Lieutenant Patterson were advised repeatedly of the attacks on Mr. Wallace and alerted by Ms. Wallace to fears for his life.
- Mr. Wallace's transfer took place without anyone seeking proper approvals (which, Mr. Wallace claims, would have led to the transfer being denied and never occurring).
- Better supervision would have prevented Officer Rene from allowing prisoners to stay back from dinner against policy, and he would have been unable to effectuate the attack.

We disagree that Mr. Wallace needed evidence that supervisors were aware that subordinates were incompetent or negligent in connection with Mr. Wallace specifically before he was injured. The foreseeability of his injuries was a proper question for the jury. *Collins v. Li*, 176 Md. App. 502, 536 (2007) ("Normally, the foreseeability inquiry is a question of fact to be decided by the trier of fact.") (cleaned up). And we agree with Mr. Wallace that the evidence reveals that the lack of training and supervision by State employees resulted in various violations of policy and procedure that proximately caused his injuries.

C. The Trial Court Failed To Instruct The Jury On The Proper Standard For An Article 24 Claim.

Next, we address the State's challenge to the Article 24 claim, and specifically the jury instruction the trial court gave in connection with this claim. We review the trial court's decision whether to give a jury instruction under the abuse of discretion standard. *CSX Transp.*, 430 Md. at 458. And we will not overturn a jury verdict unless the court's decision "rises to the level of prejudicial error." *Id.*

Article 24 is Maryland's due process clause:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land.

Under federal constitutional law, "when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged," the only cognizable Fourteenth Amendment due process claim is a challenge to "conditions or restrictions of

pretrial detention that . . . amount to punishment of the detainee . . . .” *Bell v. Wolfish*, 441 U.S. 520, 534, 535 (1979).

Both parties take the position that federal substantive due process case law is instructive, and in this instance we agree. Although Maryland courts generally describe the federal and state due process clauses as covering the same ground, “Article 24 has independent protective force and can be interpreted more broadly.” *Smith v. Bortner*, 193 Md. App. 534, 553 (2010) (*citing Koshko v. Haining*, 398 Md. 404, 443–44 (2007)). “[C]ases interpreting and applying a federal constitutional provision are only persuasive authority with respect to the similar Maryland provision.” *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 621 (2002). But broader interpretations of Article 24 rights occur only in instances where fundamental fairness demands it. *See Borchardt v. State*, 367 Md. 91, 174–75 (2001) (Raker, J., dissenting) (discussing instances where the common law doctrine of fundamental fairness required a broader interpretation of Article 24 than the Fourteenth Amendment). Mr. Wallace does not point to superseding Maryland cases or argue that fundamental fairness requires a broader interpretation of Article 24, and considering the State waives its immunity broadly with respect to tort actions against it, federal substantive due process cases paint the constitutional backdrop here.

The trial court’s instruction focused on the objective reasonableness of the State officials’ actions and whether they breached their duty to protect Mr. Wallace:

> Under Article 24 of the Maryland Declaration of Rights, detention center officials have a duty to protect detainees from violence at the hands of other detainees. If you find that the Defendants[] failed to protect the Plaintiff, Daquan Wallace

> from violence at the hands of other detainees, then the Defendants have violated the Plaintiffs' rights.

The parties dispute whether this was the proper standard for constitutional liability under Article 24. The State argues "it lacked any standard to guide the jury in its consideration of the Article 24 claim." We agree with the State.

We highlight first the ambiguity of Mr. Wallace's allegations under Article 24, which contributed to the confusion over where his constitutional rights arose. At the outset of the case, Mr. Wallace alleged, citing both Articles 24 and 26,[8] that "Defendants' agents or employees engaged in an activity that violated Plaintiff's rights as protected under the Maryland Declaration of Rights, violating Mr. Wallace's Due process rights and right to be free from excessive force." More specifically, he alleged that he "has a right to be free from the use of excessive and unnecessary physical force on his person by correctional officers. This right was denied to Plaintiff when Defendants' agents or employees knowingly allowed the brutal attacks by other correctional inmates against Plaintiff without legal cause, excuse or justification." The trial court granted the State's directed verdict as to Article 26, a decision Mr. Wallace does not contest.

[8] Article 26 of the Maryland Declaration of Rights is the analog to the Fourth Amendment and provides:

> That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

On appeal, Mr. Wallace frames his Article 24 claim as an "unconstitutional 'excessive force' claim," that "[a]t issue here is the orchestration, by Correctional Officers, of an attack on Daquan Wallace by fellow inmates while Daquan was a pretrial detainee . . . ." Quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 391–405 (2015), he argues that there is no subjective intent requirement and that "'a pretrial detainee must show *only* that the force purposely or knowingly used against him was objectively unreasonable' under a due process standard." (Emphasis added by Mr. Wallace.)

By contrast, the State argues that the circuit court should have instructed the jury consistent with federal Eighth Amendment failure to protect case law, which required Mr. Wallace to prove: (1) a serious deprivation of his rights in the form of a serious or significant physical or emotional injury or a substantial risk thereof, and (2) that the official knew of and disregarded an excessive risk to inmate health or safety. The State contends that the trial court's instruction "failed to instruct the jury that it could find a violation of Article 24 *only* if corrections personnel knew of *and* disregarded a substantial risk of serious injury to Mr. Wallace[,]" and thus "effectively imposed strict liability upon the State."

So which is it? On its face, *Kingsley* doesn't apply. Michael Kingsley was a pretrial detainee, but his case involved officers' use of excessive force, where the officers "concede[d] that they intended to use the force that they used. But the parties disagree[d] about whether the force used was excessive." 576 U.S. at 391. And "the officers [did] not dispute that they acted purposefully or knowingly with respect to the force they used

against Kingsley." *Id.* at 396. The question at issue in *Kingsley*, then, was whether "the defendant's state of mind with respect to the proper *interpretation* of the force (a series of events in the world) that the defendant deliberately (not accidentally or negligently) used." *Id.* Mr. Kingsley's allegations did not involve accidental or negligent conduct, but the deliberate use of force, *i.e.*, purposeful or knowing conduct, which is the crux of the distinction between a failure to protect versus an excessive force case:

> [T]he defendant must possess a purposeful, a knowing, or possibly a reckless state of mind. That is because, as we have stated, "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (emphasis added). . . . Thus, if an officer's Taser goes off by accident or if an officer unintentionally trips and falls on a detainee, causing him harm, the pretrial detainee cannot prevail on an excessive force claim. But if the use of force is deliberate—*i.e.*, purposeful or knowing—the pretrial detainee's claim may proceed.

Id. The Court left open the question whether civil recklessness could impose liability for mistreatment of a pretrial detainee, *id.*, but negligence alone doesn't give rise to a constitutional injury.

We agree with the State that the proper standard for a failure to protect case was articulated in *Farmer v. Brennan*, 411 U.S. 825 (1994), which involved correctional officers' failure to protect an inmate in contravention of the Eighth Amendment. Federal courts have applied the *Farmer v. Brennan* test to Article 24 failure to protect claims, including Mr. Wallace's federal case arising out of the same incident. *Wallace v. Moyer*, No. 17-CV-03718, 2020 WL 1506343, at *6 (D. Md. Mar. 30, 2020). There, the United

States District Court held that a failure to protect claim under Article 24 is "only cognizable" under the Fourteenth Amendment:

> [T]he only cognizable 14th Amendment or due process claim is a challenge to "conditions or restrictions of pretrial detention that . . . amount to punishment of the detainee." *See Bell v. Wolfish*, 441 U.S. 520, 534–36 (1979) ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."). A government official's deliberate indifference to a pretrial detainee's serious medical needs amounts to unconstitutional "punishment," *Belcher v. Oliver*, 898 F.2d 32, 34 (4th Cir. 1990), as does "a prison official's deliberate indifference to a substantial risk of serious harm," (i.e., failure to protect), *see Brown v. Harris*, 240 F.3d 383, 388 (4th Cir. 2001) (internal quotation marks omitted). Here, the Wallaces allege that the defendants knew about serious risks to Mr. Wallace's safety and, at a minimum, failed to protect him from those risks. The court thus agrees with the defendants' characterization of Counts I and VII as "failure to protect" claims. In any event, the Wallaces do not appear to contest this characterization.
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> A pretrial detainee's Fourteenth Amendment failure to protect claim is analyzed under the two-pronged inquiry set forth in *Farmer v. Brennan*, 511 U.S. 825 (1994). *See Brown*, 240 F.3d at 388–90 (applying *Farmer* to a pretrial detainee's failure to protect claim); *King-Fields v. Leggett*, No. CIV.A. ELH-11-1491, 2014 WL 694969, at *10 (D. Md. Feb. 19, 2014) (same).

Id. at *5–*6 (footnotes omitted). Later in the same proceedings, the court issued a Memorandum Opinion denying summary judgment to the individual officers, finding that there was sufficient evidence to submit the Article 24 failure to protect claim to the jury under the *Farmer* framework. *Wallace v. Moyer*, No. CCB-17-3718, 2022 WL 971187 (D. Md. Mar. 31, 2022).

In his argument before the circuit court here, Mr. Wallace referred repeatedly to his claim as a "failure to protect" claim rather than an excessive force claim. He argued that

Farmer didn't apply because "[d]eliberate indifferent applies to people who have been *convicted*" and Mr. Wallace was a pretrial detainee, thus invoking *Kingsley*. (Emphasis added.) We disagree, and point to the Fourth Circuit's analysis in *Brown v. Harris*, 240 F.3d at 383. There, the detainee committed suicide in jail and his estate sued the custodial officials. The parties disputed whether the decedent was a pretrial detainee or a convicted prisoner for purposes of his § 1983 claim alleging that the officers were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. *Id.* at 388. The court declined to resolve the question because it held that "the standard in either case is the same—that is, whether a government official has been 'deliberately indifferent to any [of his] serious medical needs.'" *Id.* (*quoting Belcher*, 898 F.2d at 34). The court characterized *Farmer* as "set[ting] forth the relevant framework for evaluating constitutional claims premised upon a prison official's 'deliberate indifference' to 'a substantial risk of serious harm to an inmate.'" *Id.* (*quoting Farmer*, 511 U.S. at 828). The court emphasized as well that "the same 'deliberate indifference' standard applies to both inmates and pretrial detainees." *Id.* at 388 n.6 (*quoting Farmer*, 511 U.S. at 829). And that covers Mr. Wallace, a pretrial detainee who alleged that the State and its employees failed in their Article 24 duty to protect him.

In a supplemental filing, Mr. Wallace argues that any error with respect to this instruction was harmless because the federal court ruled recently, on a motion for summary judgment, that the *Farmer* standard has been met in his companion federal case. *See Wallace v. Moyer*, No. CCB-17-3718, 2022 WL 971187 (D. Md. Mar. 31, 2022). But the

standard for motions for summary judgment draw all inferences in favor of the nonmovant, *id.* at *5 (*citing Tolan v. Cotton*, 572 U.S. 650, 657 (2014); *Scott v. Harris*, 550 U.S. 372, 378 (2007); *Jacobs v. N.C. Admin. Off. of the Courts*, 780 F.3d 562, 568–69 (4th Cir. 2015)), and we can't say the jury would have arrived at the same result had they been properly instructed.

The jury was instructed on a simple negligence theory of liability, but negligence doesn't give rise to a constitutional injury for either excessive force or the failure to protect. Whether under *Kingsley* or *Farmer*, the jury instruction given in this case stated the incorrect standard, and the error wasn't harmless. The judgment for Mr. Wallace on his Article 24 claim must be reversed.

D. The $200,000 Waiver Of Sovereign Immunity In The Maryland Tort Claims Act Applies To All Claims, Is Constitutional Under Article 19, And The Trial Court Did Not Have Discretion To Exceed It.

Finally, with the State's liability established under the *Longtin* and negligent supervision claims, we consider the financial scope of the State's waiver of sovereign immunity, and specifically whether it limits Mr. Wallace's recovery against the State to $200,000. Mr. Wallace makes three arguments with respect to the MTCA: *first*, that the limit contained in SG § 12-104(a), as applied, violates Article 19 of the Maryland Declaration of Rights because it leads to a "drastically inadequate remedy;" *second*, that, under Article 19, trial courts must have discretion to exceed the MTCA to afford a minimally sufficient remedy; and *third*, that the MTCA damages limitation doesn't apply to *Longtin* claims against the State itself for constitutional violations. He urges us to remand

the case to allow the trial court to exceed the statutory waiver amount in its discretion. The State, on the other hand, argues that "[t]he decision whether to waive or alter the application of sovereign immunity 'is entirely within the prerogative of the General Assembly'" and not a function of the courts. (Citation omitted.) The State is right.

At common law, the state of Maryland had absolute immunity from suits for money damages, and couldn't be sued at all in its own courts without its consent. *Tinsley v. WMATA*, 429 Md. 217, 223 (2012) (*citing Ritchie*, 324 Md. at 344; *Beka Indus. v. Worcester Cnty. Bd. of Educ.*, 419 Md. 194 (2011); *Magnetti v. Univ. of Md.*, 402 Md. 548, 556–57 (2007)). As the Court of Appeals has explained, "[t]he MTCA was enacted by the General Assembly in 1984 for the purpose of creating a remedy for individuals injured by tortious conduct attributable to the State. The MTCA was designed to expand the individual's right to obtain remuneration for injury from the government." *Cooper*, 443 Md. at 725–26 (2015) (cleaned up). The MTCA waives sovereign immunity "to a certain degree" to provide a remedy for "a party injured by the negligent act or omission of a State officer or employee within the scope of the officer's or employee's public duties." *Rodriguez v. Cooper*, 458 Md. 425, 430, 451 (2018). An injured party sues the State directly, and the MTCA provides relief against the State as a substitute for judgments against the State's personnel. *Id.* at 451–52 (*citing Cooper*, 443 Md. at 706–08). Sovereign immunity protects the State "from interference with governmental functions and preserving its control over its agencies and funds." *Id.* at 430 (*quoting Condon v. State*, 332 Md. 481, 492 (1993)). The State and its personnel "may not be sued for a money judgment unless

the Legislature has waived that immunity and enabled State agencies to obtain the funds necessary to satisfy such a judgment." *Id.* (*citing Condon*, 332 Md. at 492).

At the time Mr. Wallace's cause of action arose in December 2014, the parties agree that the waiver of sovereign immunity was limited under SG § 12-104, which deemed that "the State's liability cannot exceed $200,000 to a single claimant for injuries from a single incident or occurrence." *See also Rodriguez*, 458 Md. at 452 (applying SG § 12-104). The SG § 12-104 damages restriction does not impose a limit on the verdict amount against the State *per se*, but it does limit the extent to which that verdict amount can be collected. *See Holloway-Johnson*, 220 Md. App. at 204 n.2. And the only mechanism under the MTCA allowing a plaintiff to recover more than the $200,000 is found in SG § 12-104(c)(1)(iii), where "the Board of Public Works, with the advice and counsel of the Attorney General, [] approve[s] the payment."

Mr. Wallace seeks to avoid the straightforward application of SG § 12-104 to his lawsuit by arguing that, as applied, the MTCA violates Article 19 of the Maryland Constitution's Declaration of Rights because it leads to a "drastically inadequate remedy." Article 19 protects citizens' rights to remedies for injuries and access to the courts:

> That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

As a basic proposition, the MTCA damages cap does not violate Article 19 on its face. *See Rodriguez v. State*, 218 Md. App. 573, 631 (2014) (upholding application of the MTCA to

reduce award in verdicts against the State rising out of murder of a State prisoner by a fellow prisoner); *Cooper*, 443 Md. 680, 722–23 (2015) (*citing Lee*, 384 Md. at 264) ("This Court determined that the MTCA did not run afoul of Article 19 . . . ."); *Gooslin v. State*, 132 Md. App. 290 (2000) (holding that waiver of sovereign immunity to the then-applicable limit of $50,000 was "not a violation of Article 19"); *see also* COMAR 25.02.02.02(E) (providing for self-insurance coverage for liability under the MTCA limited to $200,000 and stating "[t]he sovereign immunity of the State is not waived for claims in excess of the limits set forth in . . . this regulation").

Nevertheless, Mr. Wallace argues that the reasonableness test outlined in *Espina v. Jackson*, 442 Md. 311, 344 (2015), authorizes courts to exceed the $200,000 waiver under certain circumstances, including these. In *Espina*, the Court of Appeals analyzed an Article 19 challenge to the Local Government Tort Claims Act ("LGTCA") damages cap, which limits the amount a plaintiff can recover from a local government for torts committed by its employees to $200,000 per individual claim and $500,000 per total claims arising from the same occurrence. CJ § 5-303(a)(1). The Court of Appeals explained that "the LGTCA cannot be described as restricting a 'traditional remedy or access to the courts' when it legislatively permits plaintiffs to enforce judgments obtained from suit against the employee against the local government." *Id.* at 337 (*quoting Rios*, 386 Md. at 139 (internal quotation omitted)). As the LGTCA limits the amount of damages recoverable, the Court found that it was similar to CJ § 11-108, Maryland's limit on non-economic damages in personal injury and wrongful death cases. *Id.* at 343. Importantly, the Court did *not*

consider the MTCA as similarly analogous.[9] *Id.* at 324. The Court then applied an Article 19 reasonableness test[10] to the LGTCA damages cap and was unable to conclude that the damages cap failed to meet this test, noting "[t]his decision is a matter of policy and it is not unreasonable." *Id.* at 344–45 (citing *Longtin*, 419 Md. at 490). In upholding the damages cap recoverable against local governments for violations of the Maryland Constitution, the Court "recognize[d] the importance our decision has not only on the victim's ability to receive compensation, but also on the local government's ability to provide indispensable services to its citizens as well as the stability of the public fisc." *Id.* at 317.

Mr. Wallace argues that the Court of Appeals's Article 19 reasonableness analysis in *Espina* extends to the MTCA. But importantly, before the LGTCA, "local governments faced unlimited liability for direct suits[,]" *Longtin*, 419 Md. at 484 (*citing Housing Auth. v. Bennett*, 359 Md. 356, 370 (2000)). The LGTCA functions as "a legislative restriction on a remedy" under Article 19, whereas the MTCA created a remedy where there otherwise was none. *See Espina*, 442 Md. at 338; *see also Cooper*, 443 Md. at 725–26 (stating "the MTCA was enacted by the General Assembly in 1984 for the purpose of *creating a remedy* for individuals injured by tortious conduct attributable to the State") (cleaned up); *Doe v.*

[9] There is only a brief mention of the MTCA in the Court's analysis of whether the LGTCA encompasses constitutional torts. *Id.* at 324. The rest of the Court's analysis considered non-MTCA case law.

[10] The test is "whether application of the damages cap leads to no remedy or a 'drastically inadequate' remedy, *i.e.*, the equivalent of 'almost no compensation' to the plaintiff." *Id.* at 344 (*quoting Jackson v. Dackman Co.*, 422 Md. 357, 372 (2011)).

Doe, 358 Md. 113, 128 (2000) (finding no violation of Article 19 when the "refusal to recognize [a] cause of action . . . does not deprive a plaintiff . . . of any access to the courts which previously existed"). Again, the LGTCA limits the amount of *damages* a plaintiff can recover from a local government for the acts of its employees within the scope of employment, *Espina*, 442 Md. at 343, but otherwise doesn't involve sovereign immunity. *See Williams v. Montgomery Cnty.*, 123 Md. App. 119, 129 (1998) (stating "the LGTCA, unlike the MTCA, has nothing to do with waiver of sovereign immunity").

As such, *Espina* doesn't open the door to an "as applied" Article 19 reasonableness challenge, nor does it disturb the long line of cases upholding the MTCA under Article 19. *See Rodriguez v. State*, 218 Md. App. at 631; *Cooper*, 443 Md. at 680; *Lee*, 384 Md. at 264; *Gooslin*, 132 Md. App. at 290. The Court of Appeals emphasized in *Rodriguez v. Cooper* (decided after *Espina*) that "[t]he decision whether to waive or alter the application of sovereign immunity . . . 'is entirely within the prerogative of the General Assembly.'" 458 Md. at 451 (*quoting Rios*, 386 Md. at 140). And we don't read *Espina* to serve as a "tacit[] rejection" of *Gooslin* and *Rodriguez v. State* as Mr. Wallace insists. "If the State chooses, by legislative action, to waive its sovereign immunity, this Court strictly construes the waiver in favor of the State." *Proctor v. WMATA*, 412 Md. 691, 709 (2010) (citation omitted); *see also Rodriguez v. State*, 218 Md. App. at 638 (*quoting Board of Educ. v. Zimmer-Rubert*, 409 Md. 200, 212 (2009)) ("Although SG § 12-102 requires the MTCA to be 'construed broadly, to ensure that injured parties have a remedy,' it is also the case that waivers of sovereign immunity are strictly construed in favor of the State."). As "the limit

on damages contained in § 12-104(a) . . . is a term of the State's waiver of sovereign immunity, not a cap on damages[,] . . . only the General Assembly can expand that waiver." *Id.* at 631 (cleaned up). We can't expand the State's waiver of statutory immunity to allow courts discretion to exceed the statutory waiver amount.

Lastly, Mr. Wallace challenges the application of the MTCA damages cap to claims directly against the State. He argues that the State had no preexisting common law immunity against direct claims involving constitutional violations. As discussed above, however, there was no preexisting common law right to sue the State for money damages at all, even for damages arising out of unconstitutional acts attributable to the State. *See Tinsley*, 429 Md. at 223 (stating "the theory that, in the absence of a statute, the State itself cannot be held liable in damages for acts that are unconstitutional rests on public policy and a theoretical notion of the 'State'") (cleaned up). The *Longtin* case, for all of its other relevance here, is inapposite to a case involving a direct claim for money damages against the State. The *Longtin* municipal defendants didn't have common law (or statutory) immunity. Mr. Wallace claims that without the ability to sue the State for constitutional violations, "the entire social compact it represents[] would be rendered meaningless and unenforceable." But the Court of Appeals has stated unequivocally, and "on many occasions . . . [that] the remedy lies not with the judiciary, but with the General Assembly since the General Assembly has made it abundantly clear that suits against the State for damages are not permitted." *Calvert Assocs. Ltd. v. Dep't of Emp. & Soc. Servs.*, 277 Md. 372, 375–76 (1976); *see also Jekofsky v. State Rds. Comm'n*, 264 Md. 471, 474 (1972)

(reiterating that the injured "appellant's remedy, if any, is with the General Assembly and not with us" because "it is desirable and in the public interest that any change in the doctrine of sovereign immunity should come from the legislative branch of the State Government rather than from the judicial branch").

We hold that the $200,000 waiver of statutory immunity is not unconstitutional under Article 19, applies to all of Mr. Wallace's claims against the State, and that the trial court does not have discretion to adjust the amount above the statutory waiver. Whatever the judgment amount, the extent to which that verdict amount can be *collected* against the State is strictly limited by statute to $200,000. *Holloway-Johnson*, 220 Md. App. at 204 n.2. Nevertheless, to avoid confusion, we will vacate the order amending the judgment of $25 million and remand with instructions that the circuit court enter judgment in the amount of $200,000. And although we conclude that the trial court erred in its jury instruction on the Article 24 failure to protect claim, it would serve no purpose to re-try this claim, as the damages for the State's liability on the negligence claim alone far exceeds the limit to the State's statutory waiver of damages and no additional damages would be recoverable. *See id.* at 78.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED WITH INSTRUCTIONS TO ENTER JUDGMENT IN FAVOR OF APPELLANT IN THE AMOUNT OF $200,000. COSTS TO BE DIVIDED EQUALLY.