

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0831

September Term, 2012

FABIEN LARONDE, *et al.*

v.

RONALD BLOUNT, II

Eyler, Deborah S.,
Woodward,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: August 17, 2015

*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 January 11, 2008, Ronald Blount, II, appellee, was delivering court files as part of his employment with the Circuit Court for Baltimore City. As appellee left the Criminal Division, Detective Robert L. Himes, III and Officer Fabien Laronde, appellants, detained appellee and accused him of being a Crips gang member. Appellee has never been a member of the Crips.

On January 5, 2011, appellee filed a complaint against appellants in the Circuit Court for Baltimore City. The case went to trial in April 2012 on claims of battery, false light, intentional infliction of emotional distress, false imprisonment, and violation of Article 24 of the Maryland Declaration of Rights. The jury returned a verdict in favor of appellants on battery, false light, and intentional infliction of emotional distress, and in favor of appellee against both appellants on false imprisonment and violation of Article 24. The jury awarded appellee \$10,000 for his false imprisonment by Officer Laronde, \$10,000 for Officer Laronde's violation of Article 24, \$10,000 for his false imprisonment by Detective Himes, and \$10,000 for Detectives Himes's violation of Article 24.

The trial court initially entered a judgment against appellants jointly and severally for a total of \$10,000. After appellee filed a Motion to Revise, Alter and/or Amend Judgment ("Motion to Revise"), the court modified the judgment and awarded appellee a total of \$40,000.

Appellants appealed and present three questions for our review, which we have reordered and rephrased:

1. Did the circuit court err in denying appellants' motion for judgment?
2. Did the circuit court err by entering separate judgments for false imprisonment and a violation of Article 24 of the Maryland Declaration of Rights?
3. Did the circuit court err by entering separate judgments against each appellant?

For the reasons stated herein, we answer the first question in the negative and the second and third questions in the affirmative. We therefore vacate the judgment of the circuit court and remand for the entry of a new judgment consistent with this opinion.

BACKGROUND¹

Appellee is a civil records clerk for the Circuit Court for Baltimore City, where he delivers case files to judges' chambers and courtrooms. While working on January 11, 2008, appellee went to the Criminal Division to pick up discs for delivery. As he left the Criminal Division, appellee heard appellants yell out, "hey partner, hey partner," and appellants approached appellee "in a very aggressive manner." Appellants stopped appellee, showed him their badges, and shined a flashlight near his eyes. Three or four officers, including appellants, then "sorta surrounded" appellee and put their hands on him so that he could not move. Appellants requested identifying information from appellee, and then asked, "how long have you been Crippin'?" Appellee told appellants, "I never been a Crip in my life."

¹ Because appellee prevailed in the jury trial below, we present and consider the facts in the light most favorable to appellee. *See Univ. of Md. Med. Sys. Corp. v. Malory*, 143 Md. App. 327, 335-36 (2001), *cert. denied*, 368 Md. 527 (2002).

Appellants then “shepherded” appellee to a bench outside of one of the courtrooms and “physically sat him down.” Appellee stated that, as he was being led toward the bench, “Detective Robert Himes looked at me as if he wanted to attack me to say, to ask the question, are you nervous or are you scared?” Detective Himes placed his hand near appellee’s chest as he questioned appellee.

The officers continued to surround appellee after he was seated. One of the officers left to obtain a camera while the others continued to stand around appellee and question him. A number of attorneys from the Office of the Public Defender took notice of the crowd of officers surrounding appellee and approached the group to ask what was happening. The officers attempted to block the public defenders’ view of appellee and told them that appellee could not leave the encounter. When the public defenders told the officers that appellee was a courthouse employee and asked why he was being detained, the officers told them that appellee was a gang member. Three of the public defenders noted that appellee looked scared.

The officer who had left previously returned with a camera, and Detective Himes began to take appellee’s picture. Appellee was told to stand up and turn in various directions as he was photographed. Appellee felt he had no choice but to follow the officers’ instructions.

At some point, Detective Himes went into a courtroom, and Officer Laronde was standing in the hallway completing paperwork. Appellants directed two deputies to continue

watching appellee in the interim, because they needed to “do some more paperwork” with appellee. At no point did appellee feel that he could leave the encounter.

Derrick Gillis, Supervisor of the Civil Division, received a phone call from the Criminal Division, notifying him that appellee was being detained. Gillis went to investigate the incident along with Marilyn Mitchell, the Civil Records Supervisor. When they arrived, appellee was still seated on the bench, and two officers were standing over appellee’s file cart, which was in the center of the hallway about twenty to twenty-five feet away from appellee.

Mitchell noted that appellee looked visibly shaken and confused. She asked Officer Laronde why appellee was being detained and told him that appellee worked at the courthouse. Officer Laronde responded that he thought that appellee was involved in gang activity. Officer Laronde told Mitchell that he was not detaining appellee, but admitted that appellee was never told that he was free to go. After about twenty minutes of heated discussion between Mitchell and Officer Laronde, Mitchell told appellee to leave and return to the Civil Division.

On July 2, 2008, appellee sent notice to the Baltimore City Solicitor of his intent to file a claim regarding the incident on January 11, 2008. On January 5, 2011, appellee filed a complaint in the circuit court against appellants.² The complaint contained twelve counts:

² Appellee also filed suit against the Mayor and City Council of Baltimore. On February 18, 2011, the Mayor and City Council of Baltimore moved to dismiss appellee’s
(continued...)

(1) violation of Article 24 of the Maryland Declaration of Rights, (2) false imprisonment, (3) battery, (4) assault, (5) false arrest, (6) intentional infliction of emotional distress, (7) negligence, (8) negligent hiring, (9) negligent supervision, (10) false light, (11) negligent entrustment, and (12) defamation.

After a series of partial and amended motions to dismiss, the case went to trial on April 17, 2012, on claims of battery, false light, intentional infliction of emotional distress, false imprisonment, and violation of Article 24. On April 18, 2012, at the close of appellee's case, appellants moved for judgment, which motion was denied. On April 19, 2012, at the close of the entire case, appellants again moved for judgment, which motion was denied.

The jury was provided with two separate verdict sheets, one for Officer Laronde and one for Detective Himes. Each verdict sheet asked whether the individual appellant was liable for battery, false light, intentional infliction of emotional distress, false imprisonment, and violation of Article 24. On April 20, 2012, the jury returned a verdict in favor of appellants as to battery, false light, and intentional infliction of emotional distress. The jury returned a verdict in favor of appellee and against both officers for false imprisonment and the Article 24 violation. Officer Laronde was found liable for \$10,000 for false imprisonment and \$10,000 for violating Article 24. Detective Himes also was found liable for \$10,000 for false imprisonment and \$10,000 for violating Article 24.

²(...continued)
complaint against them, which motion was granted on June 24, 2011.

After the jury was dismissed, the trial court stated that it would enter a judgment for \$10,000 jointly and severally, and asked appellee's counsel if he agreed with the court's proposed judgment. At that time, appellee's counsel disagreed, stating that appellee was owed \$40,000, \$20,000 as to each appellant individually.

On April 27, 2012, appellee filed a Motion to Revise, contending that he should have been awarded \$40,000 based on the jury's verdict. Appellants filed a memorandum in opposition on May 9, 2012, and the circuit court held a hearing on the Motion to Revise on June 7, 2012. At the end of the hearing, the court granted appellee's motion, and entered an award of \$20,000 against each appellant for false imprisonment and violating Article 24, for a total of \$40,000. On June 28, 2012, appellants filed their notice of appeal.

DISCUSSION

I. Compliance with the Local Government Tort Claims Act

Appellants argue that the trial court should have granted their motion for judgment at the end of appellee's case and their renewed motion for judgment at the end of the entire case, because appellee failed to present evidence demonstrating that he had provided notice of his claim within 180 days as required by the Local Government Tort Claims Act ("LGTCA"). Appellee responds that evidence of compliance with the LGTCA need not be placed before the trier of fact. We agree with appellee.

The Baltimore City Police Department is considered a "Local Government," and, as a result, falls under the LGTCA. Md. Code (2006, 2013 Repl. Vol.), § 5-301(d)(21) of the

Courts and Judicial Proceedings (I) Article (“CJP”). Pursuant to the LGTCA, “an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.” CJP § 5-304(b)(1). The notice must be in writing and state the time, place, and cause of the injury. CJP § 5-304(b)(2).

Notice of suit must be provided in person or by certified mail with return receipt requested to the “corporate authorities” of the local government being sued. CJP § 5-304(c)(1), (4). The Court of Appeals has stated that, in a suit against the Baltimore City Police Department, the City Solicitor is the appropriate corporate authority upon whom notice is to be provided. *See Dehn Motor Sales, LLC v. Schultz*, 439 Md. 460, 480 n.23 (2014).

Compliance with Section 5-304 is a condition precedent to maintaining a claim against any local government described in Section 5-301. *White v. Prince George’s Cnty.*, 163 Md. App. 129, 144, *cert. denied*, 389 Md. 401 (2005). The LGTCA thus “creates a procedural obligation that a plaintiff must meet in filing a tort action. A plaintiff must not only satisfy the notice requirement strictly or substantially, but also plead such satisfaction in his/her complaint.” *Hansen v. City of Laurel*, 420 Md. 670, 694 (2011).

In the instant case, appellee pled strict compliance with the LGTCA in his complaint. In paragraph 24 of the complaint, appellant alleged “[t]hat on July 2, 2008, notice was sent of his intent to make [a] claim against and upon the transactions described to him pursuant

[to Section] 5-306 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.” Appellant attached to the complaint a letter dated July 2, 2008, from appellee’s prior counsel to the City Solicitor, which read in relevant part:

This is to advise that I represent [appellee] as a result of personal injuries sustained on January 11, 2008. On the aforementioned date, [appellee], an employee of the Circuit Court for Baltimore City, was arrested at Clarence Mitchell Courthouse without justification by two Baltimore City police detectives. [Appellee] was detained, assaulted, and humiliated. The actions of these detectives were unconscionable, malicious and with the intent to inflict emotional distress.

The letter thus set forth the time, place, and cause of injury as required by Section 5-304(b)(2), and was correctly sent to the Baltimore City Police Department’s corporate authority, the City Solicitor. *See Dehn Motor Sales*, 439 Md. at 480 n.23. Notwithstanding such pleading of strict compliance with the LGTCA, appellants argue that appellee failed to comply with the LGTCA, because appellee did not present evidence of compliance with the LGTCA at trial.

Contrary to appellants’ assertion, nothing in Section 5-304 requires that a party’s compliance with the notice requirement be placed on the record once the case goes to trial. At no time prior to trial did appellants challenge appellee’s compliance with the notice requirement of the LGTCA via a motion to dismiss or motion for summary judgment. Appellants have provided no authority, and we have found none, to support their argument that proof of a party’s compliance with the LGTCA must be placed before the trier of fact. Compliance with the LGTCA notice requirement is a condition *precedent* to bringing a tort

action against a local government, not an element of a cause of action to be proved at trial.

See White, 163 Md. App. at 144. As the trial court stated,

[compliance with the LGTCA notice requirement is] what you need in order to get into court. If, in fact, it hasn't been done, I would expect [appellants' counsel would] say, well, it didn't get done, we shouldn't be in court. The fact that we're here now leads me to believe that there's, that there's no indication that it hasn't been done."

We agree with the trial court that, based on the record before it, appellee complied with the LGTCA notice requirement, and thus uphold the court's denial of appellants' motion for judgment.

II. Modification of the Award of Damages

In the circuit court, the jury was presented with two verdict sheets, one for each appellant. Based on those verdict sheets, the jury determined that Officer Laronde was liable for \$10,000 in damages for false imprisonment and \$10,000 in damages for violating Article 24, and that Detective Himes was liable for \$10,000 in damages for false imprisonment and \$10,000 in damages for violating Article 24. After excusing the jury, the trial court entered a judgment against appellants jointly and severally for \$10,000. Appellee then filed a Motion to Revise, and the trial court subsequently modified the award, entering a judgment against each appellant in the amount of \$20,000, for a total award of \$40,000.

On appeal, appellants contend that the circuit court's initial award of \$10,000 was appropriate, because the verdict for the Article 24 violation was necessarily based upon false imprisonment, and "[o]ne deprivation of liberty warrants only one award of damages."

Appellants also contend that, because both Detective Himes and Officer Laronde participated in the detention and questioning of appellee, they should have been held jointly and severally liable.

Appellee responds that the Article 24 verdict could have been based on violations other than false imprisonment, including deprivation of property, violation of the right to work, assault, deprivation of due process of law, or invasion of privacy, thus making the Article 24 verdict distinct from the false imprisonment verdict. According to appellee, the trial court's initial award of only \$10,000 in damages was an abuse of the court's discretion, because the jury clearly intended that appellee be awarded \$40,000. Finally, appellee contends that the trial court did not err by entering separate judgments against Detective Himes and Officer Laronde, arguing that joint tortfeasor liability does not exist as to constitutional torts.³

³ Appellee also contends that appellants' appeal is restricted to the Motion to Revise, and that appellants may not challenge the substance of the verdicts against them for false imprisonment and the Article 24 violation. Appellee is incorrect, because the trial court granted appellee's Motion to Revise and issued an amended judgment, which became the final judgment for appeal purposes. *See In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 476-77 (1997) (noting that an order granting a motion to revise under Md. Rule 2-535(b) "is appealable as a final judgment, and it brings before the appellate court the merits of that judgment"); *Gluckstern v. Sutton*, 319 Md. 634, 651 (1990) (holding that "when a motion under Rule 2-535(a) to revise a final judgment is filed within thirty days and the circuit court in fact revises the judgment, and there has been no intervening order of appeal, the prior judgment loses its finality and the revised judgment becomes the effective final judgment in the case" (citations and internal quotation marks omitted)). Appellee also contends that appellants "waived any and all objection to the total amount of the verdict rendered," because they did not request a special verdict sheet asking the jury to either
(continued...)

This Court has stated with respect to reviewing a jury verdict:

Our only role as an appellate court in reviewing a jury’s decision is to determine whether the evidence was legally sufficient to permit the judge, as a matter of law, to submit the case to the jury. When determining the sufficiency of that evidence, it is imperative that we view the evidence in the light most favorable to the prevailing party below, in order to determine whether there [was] some evidence in the case, including all inferences that may permissibly be drawn therefrom, that, if believed and if given maximum weight, could logically establish all of the elements necessary to prove that the . . . tort[-]feasor committed the tort

Univ. of Md. Med. Sys. Corp. v. Malory, 143 Md. App. 327, 335-36 (2001) (alterations in original) (citations and internal quotation marks omitted). The trial court’s grant of the motion to revise the jury’s verdict is reviewed for an abuse of discretion. *See Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 77 (2007).

Maryland Rule 2-601(a) requires prompt entry of a jury’s verdict. Generally,

[t]he trial court possess[e]s the power to correct a verdict which may be defective in form but which clearly and definitely expresses the intention of the jury. A verdict which is returned informally may be molded into proper shape by the trial court by referring to the pleadings and issues.

Traylor v. Grafton, 273 Md. 649, 683 (1975) (citations omitted). Although the trial judge has some power to modify a jury verdict, “that discretion is not boundless and if the trial court’s actions are clearly arbitrary or [have] no sound basis in law or in reason, revisory

³(...continued)

explain the basis for its findings or to state the total award amount. Again this contention is without merit, because appellants specifically requested that the trial court include a line on the verdict sheet for total damages.

actions are subject to review.” *Kleban*, 174 Md. App. at 77 (alteration in original) (citations and internal quotation marks omitted).

The bounds of a judge’s power to modify a jury verdict depend upon whether the modification is based on a factual or legal issue. In *Turner v. Hastings*, the Court of Appeals stated:

There is a risk that, in revising a jury verdict, judges may substitute their own findings in place of the jury’s, in effect, wiping out the right to a jury trial. These concerns are absent when a judge revises a non-jury verdict or a jury verdict based purely on a matter of law. In a bench trial, for example, the judge is the finder of fact, so when the judge subsequently revises his own verdict there is no concern that he is interfering with the right to a jury trial. The same is true when a judge revises a verdict based purely on a legal issue because legal issues are not within the province of the jury.

432 Md. 499, 512-13 (2013) (citation omitted). Thus the trial court may modify a jury verdict in order to make it comport with the law. *See id.* at 512 (noting that “[a] judge has substantially broader discretion when revising a non-jury verdict or when revising a jury verdict based purely on a legal issue”).

The proper amount of damages in the instant case depends upon a legal issue outside of the jury’s province. Here, the total damages awarded to appellee will be determined by whether appellee could have been awarded damages for both a violation of Article 24 and false imprisonment, and whether appellants could be held individually, rather than jointly and severally, liable for the damages awarded. We turn first to whether the trial court correctly

allowed separate awards of damages for the Article 24 violation verdict and for the false imprisonment verdict.

A. Liability for False Imprisonment and Violation of Article 24

Article 24 of the Maryland Declaration of Rights reads: “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.” The tort of false imprisonment requires “a deprivation of the liberty of another without his consent and without legal justification.” *Montgomery Ward v. Wilson*, 339 Md. 701, 721 (1995) (quoting *Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 654 (1970)). False imprisonment thus can serve as the basis for an Article 24 violation.

When two torts overlap, such that they are based upon the same facts and circumstances, damages for both torts may not be recovered. *Francis v. Johnson*, 219 Md. App. 531, 561 (2014), *cert. denied*, 442 Md. 516 (2015). In *Francis*, the appellee filed suit against three Baltimore City police officers, alleging violation of Article 24 of the Maryland Declaration of Rights,⁴ false imprisonment, battery, and assault “based on the officers’ actions in taking him from Baltimore in a police van, assaulting him, breaking his phone, and

⁴ The appellee alleged in one count a violation of both Articles 24 and 26 of the Maryland Declaration of Rights. *Francis v. Johnson*, 219 Md. App. 531, 537 (2014), *cert. denied*, 442 Md. 516 (2015). Because the appellee treated the violation of these articles as one violation, we shall refer to only Article 24 for the sake of clarity.

then dropping him off in Howard County, in the rain, without shoes, socks or a way home.” *Id.* at 537. After a six-day trial, a jury awarded appellee, as to two of the officers, the following: (1) Detective Tyrone Francis—\$100,000 for violation of Article 24, \$100,000 for false imprisonment, and \$5,000 for assault, and (2) Detective Milton Smith, III—\$100,000 for violation of Article 24, \$100,000 for false imprisonment, \$5,000 for battery, and \$5,000 for assault.⁵ *Id.* at 539, 547.

On appeal, the detectives argued, among other things, that the compensatory damages awarded against them “for the constitutional claim and the tort claims were duplicative because they were based on the same facts.” *Id.* at 559. We agreed, holding that the \$100,000 awarded against each detective on the constitutional claim was duplicative. *Id.* at 561. Writing for this Court, Judge Graeff explained:

The Maryland appellate courts have made clear that there can be only one recovery of damages for one wrong or injury. *Smallwood v. Bradford*, 352 Md. 8, 24, 720 A.2d 586 (1998) (“Duplicative or overlapping recoveries in a tort action are not permissible.”); *Shapiro v. Chapman*, 70 Md. App. 307, 315, 520 A.2d 1330 (1987) (plaintiffs “would not have been permitted to recover twice for the same tort merely because the wrong gave rise to alternative theories of recovery”). Here, we agree with appellants that the jury’s verdict permitted [appellee] to “recover twice for the same tort merely because the wrong gave rise to alternative theories of recovery.” *Shapiro*, 70 Md. App. at 315, 520 A.2d 1330. **The court’s instructions to the jury, as well as the closing arguments of counsel, provided no basis for the jury to find a constitutional violation based on anything other than the facts supporting the**

⁵ The jury also awarded appellee punitive damages in the amount of \$15,000 against Detective Francis and \$19,000 against Detective Smith. *Francis*, 219 Md. App. at 547.

tort claims. Accordingly, the \$100,000 damages awarded on the constitutional claim was duplicative

Id. (emphasis added). As a result of our holding, the compensatory damage awards were revised to eliminate any award on the constitutional claim, leaving intact the awards on the tort claims. *Id.*

In the case *sub judice*, we agree with appellants that the circuit court’s modified judgment permitted appellant to “recover twice for the same tort merely because the wrong gave rise to alternative theories of recovery,” namely, a violation of Article 24 and false imprisonment. *See Shapiro*, 70 Md. App. at 315. The facts presented in the circuit court show one continuous event wherein appellee was deprived of his liberty by appellants, who briefly detained him without just cause, and such event led to appellee being “disseized of his [] liberties” as proscribed by Article 24, and deprived of his liberties “without his consent and without legal justification” as set forth under the definition of false imprisonment. *See Md. Decl. of Rts., Art. 17; Montgomery Ward*, 339 Md. at 721. Although the same facts permitted two theories of recovery, appellee is permitted to recover damages for appellants’ actions only once.⁶

⁶ Appellee also attempts to analogize 42 U.S.C. § 1983, which provides a federal civil cause of action for deprivation of rights, to his case, arguing that, under Section 1983, “constitutional torts stand separately from State law torts as to damages.” There are two problems with appellee’s analogy. First, appellee did not bring a claim under Section 1983, and thus whether a violation of a constitutional tort under Section 1983 allows for separate damages from a state tort is not before us. Second, even if appellee had brought a Section 1983 claim, federal jurisprudence holds that state rules of damages apply to Section 1983 (continued...)

Nevertheless, appellee contends that the evidence at trial supported bases other than false imprisonment for the Article 24 verdict, including: (1) deprivation of property, (2) violation of his right to engage in employment, (3) assault, (4) violation of his due process right to be taken before a Court Commissioner, and (5) violation of his right to privacy. According to appellee, the trial court's initial assumption that the verdict was based upon false imprisonment was invalid, because the jury did not explain its basis for finding a violation of Article 24. Appellee claims that the court was thus "substituting its own thought process for that of the thought process of the jurors."

Appellee's arguments are without merit. The circuit court's jury instructions and both parties' closing arguments provided no basis other than false imprisonment on which the jury could have grounded its Article 24 verdict. Indeed, when the court gave the jury its instructions, the definition of false imprisonment was read immediately prior to the language of Article 24. The trial court told the jury:

False imprisonment is the intentional restriction without legal justification of the freedom of movement of a person who is aware of the restriction and who does not consent. Now, Article 24 of the Maryland Declaration of Rights states that "No man ought to be taken or imprisoned or deceived [sic] of his freehold liberties or privileges or outlawed or exiled or in any manner destroyed or

⁶(...continued)
actions. *See Clappier v. Flynn*, 605 F.2d 519, 528 (10 Cir. 1979). Therefore, when an injury allows for a constitutional theory of damages and a common law tort theory of damages, the injured party remains "entitled to only one compensatory damage award." *Id.* at 529.

deprived of his life, liberty or property, but by the judgment of his peers or by the law of the land.”

(Emphasis added). The similarity in language between the false imprisonment instruction and the Article 24 instruction allowed the jury to conclude that a verdict in favor of appellee as to false imprisonment necessarily supported a verdict in favor of appellee as to Article 24, and vice versa. In addition, the court offered no further explanation as to the findings necessary to support an Article 24 verdict.

Not only did the jury instructions suggest that Article 24 and false imprisonment could be based on the same facts, closing arguments were devoid of any discussion of Article 24. Appellee did not once mention Article 24 in his closing argument, much less explain how or why the jury should find that it was violated. Appellants also did not offer any explanation in closing argument as to why Article 24 was not violated, and instead focused on discrediting appellee’s testimony and that of appellee’s witness. Without any guidance to the jury as to the appropriate basis for Article 24 liability, we conclude that the jury relied upon the juxtaposition of the jury instructions on false imprisonment and Article 24 and the close language of the two to find false imprisonment and Article 24 liability based on the same underlying facts—the detention of appellee without legal justification.

Even if appellee’s alternative theories for Article 24 liability had been presented to the jury, none would have provided a legally valid basis for the Article 24 verdict. First, in order for deprivation of property to form the basis of Article 24 liability, the deprivation of property must rise to the level of an unconstitutional taking, such that “state action has been

employed to deprive that party of a substantial interest in property.” *Roberts v. Total Health Care, Inc.*, 109 Md. App. 635, 644 (1996) (emphasis omitted), *aff’d*, 349 Md. 499 (1998). Appellants’ brief “taking” of appellee’s courthouse identification card does not rise to the level of an unconstitutional taking, because appellants only briefly controlled the identification card, and the card was likely the property of the courthouse, rather than appellee.

Second, appellee’s status as a contract worker did not provide him with a right to continued public employment, absent a contract creating that right. *See Higginbotham v. Pub. Serv. Comm’n of Md.*, 171 Md. App. 254, 267 (2006) (noting that a “colorable property interest” in continued public employment “must be grounded on a source of law apart from Article 24 itself”). Appellee’s employment contract was not introduced at trial, and consequently, there is no basis on which the jury could have concluded that appellee had a right to continued employment.

Next, in order for the tort of assault to rise to the level of constitutional violation, it must violate substantive due process rights. *See Shapiro*, 70 Md. App. at 313-14. “The only police actions that violate substantive due process are those which ‘shock the conscience’ of the court.” *Branch v. McGeeney*, 123 Md. App. 330, 353 (1998) (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). In *Branch*, this Court concluded that the arrest of a nine-year-old girl, who was placed on her knees, handcuffed, told she was “going to jail,” and taken to the police station for fingerprinting after “annoying” a neighbor by

throwing acorns at the wall of their apartment complex, was not sufficient to shock the conscience of the court. *Branch*, 123 Md. App. at 338, 342-44, 353. In contrast to *Branch*, appellee was never handcuffed or placed under arrest. The assault in the instant matter, if in fact one occurred, was based solely on Detective Himes placing his hand near appellee's chest while asking if he was nervous or scared. We believe that, if the situation in *Branch* did not shock our conscience, neither does appellee's encounter with appellants, and thus assault cannot be the basis of the Article 24 violation.

Appellee also was not deprived of his due process rights to be taken before a Court Commissioner. The Baltimore Police Department's General Order 2-89 states that, when a person has been detained but not criminally charged, "the detainee shall be released **immediately** with no further processing, subject to the provisions of this Order." Because appellee was not criminally charged, he was appropriately released without being taken before a Court Commissioner. Thus no due process violation occurred, and accordingly, a due process violation cannot serve as the basis for the Article 24 verdict.

Finally, a violation of appellee's right to privacy could not have served as the basis for the Article 24 verdict. Appellee argues that appellants' taking of appellee's picture or asking to see appellee's identification could have formed the basis for the Article 24 verdict. In *Carr v. Watkins*, Maryland first recognized the tort of invasion of privacy. 227 Md. 578, 586 (1962). Since then, we have adopted the following definition of invasion of privacy from the Restatement (Second) of Torts:

§ 652A. General Principle

- (1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.
- (2) The right of privacy is invaded by
 - (a) unreasonable intrusion upon the seclusion of another, as stated in § 652B; or
 - (b) appropriation of the other's name or likeness, as stated in § 652C; or
 - (c) unreasonable publicity given to the other's private life, as stated in § 652D; or
 - (d) publicity that unreasonably places the other in a false light before the public, as stated in § 652E.

Restatement (Second) of Torts § 652A (1977); *see Lawrence v. A.S. Abell Co.*, 299 Md. 697, 700-02 (1984).

We thus turn to the manners by which a person's right to privacy may be violated. Initially, we decide that Section 652A(2)(b) does not apply in the case *sub judice*, because appellants never attempted to appropriate appellee's name or likeness. Appellee's invasion of privacy claim also cannot be based upon Section 652A(2)(d), because the jury found no liability as to either appellant on the tort of false light.

As to Section 652A(2)(a), we have defined an unreasonable intrusion upon solitude or seclusion as:

“The intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that would be highly offensive to a reasonable person.” To determine whether the [invasion] constituted

an actionable intrusion under Maryland law, we ask whether there has been an “intrusion into a private place or the invasion of a private seclusion that the plaintiff has thrown about his person or affairs. **There is no liability for observing him in public places since he is not then in seclusion.**”

Furman v. Sheppard, 130 Md. App. 67, 73 (2000) (quoting *Pemberton v. Bethlehem Steel Corp.*, 66 Md. App. 133, 163 (1986)). The Restatement (Second) of Torts further explains that taking a person’s photograph while he is in public is not a violation of the right to privacy, “since he is not then in seclusion, and his appearance is public and open to the public eye.” Restatement (Second) of Torts § 652B cmt. c (1977).

In the instant case, appellee was in the courthouse, not a place of seclusion, when appellants asked to see his identification and took his photograph. Because appellee was in public, his appearance and his identification as a member of the courthouse staff were “public and open to the public eye,” including Detective Himes and Officer Laronde. *See id.* Consequently, appellants’ asking to see appellee’s courthouse identification and taking his photograph did not invade appellee’s privacy. Accordingly, Section 652(A)(2)(a) cannot serve as the basis for an invasion of privacy claim, nor the jury’s Article 24 verdict.

Last, we consider whether appellants’ conduct in photographing appellant and asking for his identification caused unreasonable publicity to appellee’s private life under Section 652A(2)(c). Publicity in this context means “that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.” Restatement (Second)

of Torts § 652D cmt. a (1977). Appellants in the instant case did not communicate their belief that appellee was a Crip to the public at large, or to so many people that the matter would become public knowledge. Instead, a few members of the Public Defender’s office became aware of appellants’ accusation, as did appellee’s supervisor and colleague from the Civil Division. Although the incident became known throughout the courthouse, appellants were not responsible for the spreading of such information. Therefore, appellants did not invade appellee’s privacy pursuant to Section 652A(2)(c), and thus invasion of privacy cannot serve as the basis for the Article 24 verdict.

In sum, none of appellee’s alternative theories for the Article 24 verdict were presented to the jury, nor were they legally valid, and thus appellee’s theories cannot provide the basis for the jury’s finding of Article 24 liability. Because the jury instructions for Article 24 and false imprisonment were read together, and because the language of the instructions both involve the deprivation of liberty, we conclude that the jury’s Article 24 verdict was based upon the same facts as the tort of false imprisonment. Consequently, appellee may recover damages only once for the overlapping theories of liability.⁷

⁷ Appellants contend that only nominal damages should have been assessed for the violation of appellee’s constitutional rights under Article 24. Generally, where a person’s rights are violated but no damages can be established, “the party injured is at least entitled to a verdict for nominal damages.” *Mason v. Wrightson*, 205 Md. 481, 489 (1954) (citations and internal quotation marks omitted). Here, appellee’s actual injury was his false imprisonment. Appellants do not contend that the jury’s Article 24 verdict was invalid because the false imprisonment did not rise to the level of a constitutional violation, and thus we do not undertake an analysis that would challenge the jury’s verdict in this regard. *See*

(continued...)

B. Joint and Several Liability

“Joint liability is predicated on the existence of two or more individuals who have each committed wrongs and are both legally responsible for the damage caused to a person or property by the commission of those wrongs.” *Rivera v. Prince George’s Cnty. Health Dep’t*, 102 Md. App. 456, 475 (1994), *cert. denied*, 338 Md. 117 (1995). Maryland recognizes joint and several liability when joint tortfeasors have acted in concert.⁸ *Consumer Prot. Div. v. Morgan*, 387 Md. 125, 177 (2005). With regard to concerted action, the Court of Appeals has stated:

“It is settled definitely that all who act in concert will be liable for the entire result. . . . Those who actively participate in the wrongful act, by cooperation or request, or who lend aid, encouragement or countenance to the wrongdoer, or approval to his acts done for their benefit, are equally liable with him. Express agreement is not necessary; all that is required is that there shall be a common design or understanding.”

⁷(...continued)

Md. Rule 8-504; *see also DiPino v. Davis*, 354 Md. 18, 56 (1999) (“[I]f a point germane to the appeal is not adequately raised in a party’s brief, the court may, and ordinarily should, decline to address it.”). As a result, appellee was entitled to more than nominal damages under Article 24 for the injury suffered through false imprisonment. Because, as we have stated in Section II.A, the actual injury for both false imprisonment and the Article 24 violation were based on the same facts, the total damages available to appellee must reflect only that one injury.

⁸We also recognize joint and several liability for concurrent tortfeasors, or tortfeasors who act independently, but whose acts combine to cause a single, indivisible harm. *See Consumer Prot. Div. v. Morgan*, 387 Md. 125, 178-83 (2005) (providing a detailed description of concurrent tortfeasor liability). Because the facts of the case *sub judice* are more in line with concerted, rather than concurrent, tortfeasor action, we do not consider the details and differences between the two methods of joint and several liability here.

Id. at 178 (alteration in original) (quoting William L. Prosser, *Joint Torts & Several Liability*, 25 Calif. L. Rev. 413, 429-30 (1936)). The Court further stated that “[t]he rationale for joint and several liability for this category is that tortfeasors who joined together should be liable for the entire damage, independent of whether any one of them directly caused more or less of the damage.” *Morgan*, 387 Md. at 178. The same rationale for joint and several liability has been applied to cases of false imprisonment: “Each person is equally responsible where several persons unite in the wrongful act constituting false imprisonment. Thus, more than one officer and more than one police department may be exposed to liability for an unlawful arrest and subsequent confinement.” 32 Am. Jur. 2d False Imprisonment § 37 (2014) (footnotes omitted).

In the instant case, the jury determined that both Detective Himes and Officer Laronde violated Article 24 and committed the tort of false imprisonment when they detained appellee on January 11, 2008. In reaching its conclusion, the jury was presented with two separate verdict sheets—one for Officer Laronde and one for Detective Himes. Officer Laronde’s verdict sheet read, in relevant part:

3. Do you find by a preponderance of the evidence that [appellee] was falsely imprisoned by [appellant], Fabien Laronde?

YES _____ NO _____

4. What amount of damages, if any, do you award [appellee] for false imprisonment?

\$ _____

5. Do you find by a preponderance of the evidence that [appellee's] Declaration of Rights, set in Article 24 of the Maryland Constitution, were violated by Officer Fabien Laronde?

YES _____ NO _____

6. What amount of damages, if any, do you award [appellee] for [appellee's] Declaration of Rights, set forth in Article 24 of the Maryland Constitution?

\$ _____

The jury answered “yes” to questions 3 and 5, and wrote 10,000 as the dollar amount awarded under questions 4 and 6. The verdict sheet for Detective Himes was identical in every respect, including the jury’s responses, except to change Officer Laronde’s name to Detective Himes.

Based on the language of the verdict sheet and the jury’s answers to each of the relevant questions on the verdict sheet, the jury determined that both Detective Himes and Officer Laronde were liable for violating appellee’s rights and were responsible for damages for such violation. The jury thus viewed appellants as “two . . . individuals who have each committed wrongs and are both legally responsible for the damage caused” to appellee. *See Rivera*, 102 Md. App. at 475. Detective Himes and Officer Laronde are therefore joint

tortfeasors, and consequently, they are equally responsible for the entire damage that they caused to appellee.⁹

The jury awarded appellee \$10,000 for each violation committed by each appellant. As explained above, however, there was only one harm caused to appellee by the Article 24 violation and the tort of false imprisonment, and appellee is permitted to recover for that harm only once. Therefore, the jury verdict, when modified by the law on duplicative damages, awarded appellee \$10,000 in damages from each appellant for the false

⁹ Appellee contends that the theory of joint and several liability is incompatible with constitutional tort violations. Analogizing to Section 1983, appellee argues that making multiple tortfeasors fully responsible for the entire damage caused does not further the goal of deterring future constitutional tort violations. Instead, appellee contends that damages should be apportioned individually to each tortfeasor. Appellee is correct in stating that deterrence is one purpose of awarding damages under Section 1983; however, this goal does not carry over to claims made under a state constitution or via a common law tort, and thus appellee's analogy to Section 1983 does not apply here.

In Maryland, state constitutional claims are brought as common law actions, and common law remedies are available. *See Prince George's Cnty. v. Longtin*, 190 Md. App. 97, 118 (2010) (“[A] State constitutional tort, such as one premised on a violation of a ‘self-executing’ constitutional provision, like Article 24 of the Maryland Declaration of Rights, is enforceable in a common law action for damages.”), *aff'd*, 419 Md. 450 (2011). Damages may be sought as compensatory, punitive, or both. Only punitive damages are intended to punish the wrongs of the tortfeasors or act as a deterrent. *See Frazier v. Castle Ford, Ltd.*, 430 Md. 144, 162 (2013). Because of the deterrent purpose associated with punitive damages, punitive damages are awarded individually based on individual liability. *See Owens-Illinois, Inc. v. Armstrong*, 326 Md. 107, 127-28, *cert. denied*, 506 U.S. 871 (1992). In the instant case, no punitive damages were awarded to appellee, and thus an award of individual damages would not be appropriate. In contrast to punitive damages, the purpose of compensatory damages is to have joint tortfeasors share in the responsibility of compensating the injured party. *Id.* at 127. Because appellee was awarded compensatory damages, it is appropriate that appellants share the responsibility of compensating appellee jointly and severally.

imprisonment harm. *See Francis*, 219 Md. App. at 561 (revised compensatory damages awards eliminated any award on the constitutional claim, leaving intact the awards on the tort claims). The total liability was thus \$20,000, adding together the \$10,000 liability attributed to Detective Himes and the \$10,000 liability attributed to Officer Laronde. Because appellants are jointly and severally liable, however, Detective Himes and Officer Laronde are each responsible for the full \$20,000 of damages.¹⁰

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED AS TO THE DENIAL OF APPELLANTS' MOTION FOR JUDGMENT. JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AS TO DAMAGES. CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO ENTER A JUDGMENT IN FAVOR OF APPELLEE AND AGAINST APPELLANTS, JOINTLY AND SEVERALLY, IN THE AMOUNT OF \$20,000. COSTS TO BE PAID 50% BY APPELLANTS AND 50% BY APPELLEE.

¹⁰ Although appellants are jointly and severally liable for the damages caused, the effect of this liability on payment to appellee means little. Because the officers were not found to have acted with malice, the Baltimore City Police Department is responsible for paying appellee his award. *See DiPino*, 354 Md. at 51-52 (“[A]s a matter of common law, [] local governmental entities do, indeed, have *respondeat superior* liability for civil damages resulting from State Constitutional violations committed by their agents and employees within the scope of the employment.”).