Circuit Court for Prince George's County
Case No. CAL22-30491

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1076

September Term, 2024

JAMES McCARD, III

v.

JASMINE R. JONES

Wells, C.J.,
Arthur,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: January 30, 2026

Appellant James McCard sued Appellee Jasmine Jones, a Prince George's County Police Officer, in the Circuit Court for Prince George's County for battery, negligence, intentional infliction of emotional distress, punitive damages, and excessive force under Articles 24 and 26 of the Maryland Declaration of Rights. Officer Jones moved for judgment at the end of McCard's case and renewed her motion at the close of all the evidence. The jury found Officer Jones liable for battery and excessive force, but made a specific finding that Officer Jones had not acted with malice. Officer Jones filed a Motion for Judgment Notwithstanding the Verdict or in the Alternative to Revise the Judgment ("Motion for JNOV"). After a hearing, the court granted Officer Jones' Motion for JNOV, based on the jury's finding that Officer Jones had not acted with malice rendering the verdict inconsistent, in the court's thinking.

McCard now appeals, asserting two questions which we have slightly rephrased:

1. Did Officer Jones preserve her arguments for her Motion for JNOV at the time she moved for judgment at the close of the evidence?
2. Did the court err in granting Officer Jones' Motion for JNOV?

For the reasons that follow, we hold Officer Jones, in fact, preserved her arguments for JNOV, but the circuit court erred in granting JNOV on the state constitutional claim for excessive force because public officials, like Officer Jones, do not enjoy immunity against constitutional claims. Therefore, we reverse the court's grant of JNOV in Officer Jones' favor and reinstate the jury's award.

FACTUAL AND PROCEDURAL BACKGROUND

Officer Jones, along with two other County police officers, arrested McCard after responding to a call for service regarding an individual asleep in his vehicle near Kenmoor Middle School. When she approached the vehicle, Officer Jones noticed the engine was running while McCard was asleep over the wheel and had his foot on the brake. Officer Jones observed beer cans around the car and smelled alcohol when she opened the driver's door. Officer Jones attempted to shake McCard awake, and when he finally woke up, according to Officer Jones, he tried to grab the gear shift to put the car in drive. Officer Jones testified that when she tried removing McCard from the vehicle, he attempted to pull her into it. After she removed McCard from the vehicle, Officer Jones testified that she put him on the ground and, along with the other two officers' assistance, placed him in handcuffs. McCard testified that the officers slammed him against the car chest first. He also testified that the officers twisted his arm so far behind his back that it popped before handcuffing him and putting him on the ground.

McCard was transported to a hospital that treated him for a dislocated shoulder, which eventually required surgery for a torn rotator cuff. McCard testified that his shoulder injury caused permanent damage to his arm and multiple practicioners had since recommended a total shoulder replacement. McCard sued Officer Jones for battery, negligence, intentional infliction of emotional distress, punitive damages, and a constitutional claim of excessive force under Articles 24 and 26 of the Maryland Declaration of Rights.

At the start of trial, the parties argued Officer Jones' motion for summary judgment. The relevant portion of her argument is produced here:

> [OFFICER JONES]: . . . For battery and negligence, they kind of share a common immunity. Battery, police officers are entitled to what is called law enforcement officer's privilege. Because if you think about it, every time a police officer touches somebody during the course of an arrest, it is a battery. Under Maryland law, to overcome this privilege, I am sorry, this immunity, there has to be evidence of malice. Same thing for negligence. Under Maryland law, police officers are entitled to what is called public official immunity. And again, to overcome that immunity, there has to be showing of malice.
>
> With regards to Count 3, which is the state constitutional claim, state constitutional claim essentially has, depending upon how you read it, between three to four elements. The first one is that there has to be a showing that a plaintiff's state constitutional rights were violated. The second element is that there has to be a showing that the officer did that with malice. . . .

The court denied the motion for summary judgment and the case proceeded to trial.

At the close of McCard's case-in-chief, Officer Jones made a motion for judgment with the relevant portions again produced here:

> [OFFICER JONES]: As I said earlier, I would like to reraise all of the arguments that I made yesterday when the Court heard my motion for summary judgment. Just based on the evidence that the Plaintiff's put forth, even in the light most favorable to the Plaintiff, **there is no evidence of malice.**
>
> The Plaintiff described the forced used on him basically as being pulled out of the car and having, basically, an arm bar done on the back of his arms. **There is no evidence—and just to be clear, malice, as I said yesterday, is akin to specific intent. Meaning that there has to be evidence showing that the person intended the result and not just the act, i.e., that they intended to cause Mr. McCard an injury.**
>
> There is no evidence that the Plaintiff's put forth showing that. While force was used -- and, again, force, you know -- with regards to Count 3, if you do find that there is malice, Count 3, which is the excessive force claim, still falls [sic] because the force that is used is evaluated under the Graham v.

> Connor standard, which is whether the officer's actions are objectively reasonable in the lights and circumstances confronting them. . . .
>
> With regards to the negligence claim, Your Honor, Again, I am going to reraise my immunity argument, specifically public official immunity. In order to breach that, there has to be a showing of malice. And, again, there is no evidence that Officer Jones actually intended to cause the Plaintiff any injuries. . . .
>
> Also going back with the battery. I would also just reiterate that in order to pierce -- that Officer Jones is also immune from that under law enforcement officers' privilege. It is very similar to public official immunity because if you think about it, as I said yesterday, every time a police officer touched somebody, it is a battery. The law recognizes in order to pierce that, that you have to show, again, malice[.] . . .

(emphasis supplied). In his argument in opposition to Officer Jones' motion for judgment, McCard's counsel stated, "I am a little confused if they are still arguing that malice applies to the constitutional claim." The court then asked Officer Jones' counsel, in her rebuttal argument, to "focus also on whether there needs to be a malice instruction associated with the excessive force instruction." Officer Jones' counsel responded:

> [OFFICER JONES]: **Your Honor, I think that there has to be a malice instruction for that. Yes, for the whole thing**, and that is the first question on the verdict sheet because for excessive force for the state constitutional claim -- court's indulgence.
>
> Your Honor, in the case law, it is, for lack of a better term, weird, but my understanding of it is it is a three-step process. And give me one moment. So if you read my motion, excessive force can be brought under Article 24, 26. It is the same standard. And this is straight from Davis v. DiPino. It is actually in the jury instructions is that "To state an actionable state constitutional claim against an officer, the litigant has to prove that their rights were violated and that the officer engaged in that activity with actual malice." . . .
>
> . . . So the state constitution -- those two elements that I described, that is just to state a claim, but then what the Maryland courts have held under Aqua (phonetically sp.) is that once you get past those two elements, then the same standard applies from Graham v. Connor. So it essentially becomes a three-

> step process where you have a right that has been violated. It was violated with malice. And then you get to the federal standard that is used.
>
> . . . **But ultimately, again, to reach the merits of a state constitutional claim, a litigant has to prove malice.**

(emphasis supplied).

The court denied Officer Jones' motion for judgment with respect to the battery and excessive use of force claims.[1]

Officer Jones made a renewed motion for judgment at the close of all the evidence, stating: "I would like to make a renewed motion for judgment. Again, [there] is no evidence of malice. . . . [J]ust overall, there is no evidence of malice." The court took her renewed motion under advisement.

The jury returned a verdict in favor of McCard, finding that Officer Jones committed battery and used excessive force in violation of the Maryland Declaration of Rights. However, the jury specifically found that Officer Jones did not act with malice. The jury

[1] In a brief response before the court's ruling, McCard cited *Tavakoli-Nouri v. State*, 139 Md. App. 716, 734–35 (2001), specifically quoting: "Thus, a police officer acting without malice may be liable for using excessive force in an arrest, in violation of Article 24 of the Maryland Declaration of Rights. Put conversely, there is not a 'lack of malice' defense to a 'constitutional tort' claim alleging a violation of Article 24." We note, however, that *Tavakoli-Nouri* dealt with State troopers claiming qualified immunity under the Maryland Tort Claims Act, which is entirely different from the public official immunity at issue here. *See id.* at 734 (citing Md. Code, State Government § 12-105 for the proposition that State police officers are entitled to qualified immunity under Md. Code, CJ § 5-522(b), which is the Maryland Tort Claims Act). Likewise, a few years later, our Supreme Court explicitly rejected the proposition McCard quoted above. *See Lee v. Cline*, 384 Md. 245, 262–66 (2004) (discussing the history and development of the Maryland Tort Claims Act and contrasting it with public official immunity before holding "that the immunity under the Maryland Tort Claims Act, if otherwise applicable, encompasses constitutional torts" while public official immunity does not).

awarded McCard a total of $900,447.63 in compensatory damages, but declined to award punitive damages based on its finding that Officer Jones had not acted with malice by clear and convincing evidence.

After trial, Officer Jones filed a Motion for JNOV. She alleged that "[i]mmediately following the verdict and prior the jury being discharged, [Officer Jones] objected and argued the verdict was inconsistent" based on both battery and excessive force claims requiring a finding of malice. Officer Jones also argued in her Motion for JNOV that since "[m]alice is required to sustain a claim of excessive force under the Maryland Declaration of Rights," without malice, police officers are entitled to public official immunity under Maryland Code Annotated, Courts and Judicial Proceedings ("CJ") § 5-507.

The court granted Officer Jones' Motion for JNOV based on the jury finding that Officer Jones had not acted with malice. The court set aside the judgment and entered a new judgment in favor of Officer Jones. This timely appeal followed.

STANDARD OF REVIEW

We review a circuit court's order granting a motion for judgment notwithstanding the verdict under a de novo standard of review. *Marrick Homes LLC v. Rutkowski*, 232 Md. App. 689, 697 (2017). As we have explained:

> [W]e focus on whether the [appellant] presented evidence that, taken in the light most favorable to the nonmoving party, legally supported their claim. The evidence legally supports a claim if any reasonable fact finder could find the existence of the cause of action by a preponderance of the evidence. In a jury trial, the amount of legally sufficient evidence needed to create a jury question is slight. Thus, if the nonmoving party offers competent evidence that rises above speculation, hypothesis, and conjecture, the JNOV should be denied. In determining the sufficiency of the evidence, the court must resolve

> all conflicts in favor of the nonmoving party. Also, the court will assume the truth of all the nonmoving party's evidence and inferences that may naturally and legitimately be deduced from the evidence.

Barnes v. Greater Baltimore Med. Ctr., Inc., 210 Md. App. 457, 480 (2013).

DISCUSSION

I. Officer Jones Preserved her Arguments at JNOV Because She Raised Those Arguments at her Motion for Judgment.

A. Parties' Contentions

McCard argues Officer Jones failed to preserve her immunity argument for her Motion for JNOV because Officer Jones did not mention CJ § 5-507 in her original motion for judgment at the end of McCard's case. McCard further contends that in her renewed motion for judgment at the close of all evidence, Officer Jones renewed it solely on the bases that "there was no evidence of malice, causation[,] and to object to the verdict form as proposed[.]" McCard asserts Officer Jones' argument about malice at that time was only related to the punitive damages claim and not the constitutional claim of excessive force.

Officer Jones argues that under Maryland law, if a party "renews" a prior motion for judgment, "the party implicitly incorporates by reference the reasons previously given." Officer Jones maintains that since she explicitly made a "renewed" motion for judgment at the close of all evidence, that motion incorporated by reference all the arguments provided in her original motion for judgment at the close of McCard's case. Officer Jones contends that in her original motion, she re-raised the arguments previously advanced in her motion for summary judgment, including that malice is a required showing for a state constitutional claim against a public official. Therefore, Officer Jones argues that renewing

her motion for judgment at the close of all evidence properly preserved the issues set forth in her Motion for JNOV. Officer Jones also argues she preserved the issue by citing *Davis v. DiPino*, 99 Md. App. 282 (1994), in her first motion for judgment, "which tied the actual-malice pleading requirement for state constitutional claims against local officials to [CJ] § 5-507(a)(1)."

B. Analysis

Review of the trial transcript reveals that Officer Jones in fact preserved her arguments for JNOV. "In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the clse of all the evidence and only on the grounds advanced in support of the earlier motion." Md. Rule 2-532. When making a motion for judgment at the close of all the evidence, if "the movant states that the motion is based upon the same reasons given at the time [an] original motion for judgment was made, or renews a motion for judgment, the party implicitly incorporates by reference the reasons previously given." *Maryland Prop. Mgmt., LLC v. Peters-Hawkins*, 249 Md. App. 1, 23 (2021) (citing *Nelson v. Carroll*, 350 Md. 247, 254 (1998)).

Officer Jones argued malice was required to sustain a claim of excessive force in her first motion for judgment at the close of McCard's case:

> [OFFICER JONES]: As I said earlier, I would like to reraise all of the arguments that I made yesterday when the Court heard my motion for

> summary judgment.[2] Just based on the evidence that the Plaintiff's put forth, even in the light most favorable to the Plaintiff, **there is no evidence of malice.**
>
> The Plaintiff described the forced used on him basically as being pulled out of the car and having, basically, an arm bar done on the back of his arms. **There is no evidence—and just to be clear, malice, as I said yesterday, is akin to specific intent. Meaning that there has to be evidence showing that the person intended the result and not just the act, i.e., that they intended to cause Mr. McCard an injury.**
>
> There is no evidence that the Plaintiff's put forth showing that. While force was used -- and, again, force, you know -- with regards to Count 3, if you do find that there is malice, Count 3, which is the excessive force claim, still falls [sic] because the force that is used is evaluated under the Graham v. Connor standard, which is whether the officer's actions are objectively reasonable in the lights and circumstances confronting them.

(emphasis supplied). And in her rebuttal argument, in response to the court's inquiry as to "whether there needs to be a malice instruction associated with the excessive force instruction," Officer Jones responded unambiguously, "Your Honor, I think that there has to be a malice instruction for that. Yes, for the whole thing. . . . [A]gain, to reach the merits of a state constitutional claim, a litigant has to prove malice." Clearly, Officer Jones raised the argument in her initial motion for judgment.

At the close of all the evidence, Officer Jones re-raised the argument that malice is required for the excessive force claim by renewing her earlier motion and thereby incorporating by reference her previous arguments about malice. She stated: "I would like

[2] The Rules do not provide that a party may preserve an issue for JNOV by raising it at summary judgment and renewing it from there. Officer Jones' statement, therefore, that she was reraising the arguments she made the previous day on summary judgment does not affect the preservation analysis.

to make a renewed motion for judgment. Again, [there] is no evidence of malice. . . . [J]ust overall, there is no evidence of malice." In making her renewed motion, Officer Jones did not have to explicitly re-state that malice is an element of excessive force. Even by simply stating she was renewing her motion, she incorporated the earlier argument. Therefore, the malice argument was properly preserved for her later Motion for JNOV.

We are not convinced that Officer Jones' failure to specifically cite CJ § 5-507 in her motion for judgment renders her argument unpreserved, as McCard asserts. Based on the arguments made during Officer Jones' motions for judgment as well as her Motion for JNOV, we interpret her malice argument to have been intertwined with her CJ § 5-507 argument.

As Officer Jones argues, in her first motion for judgment she cited *Davis v. DiPino* (hereinafter "*Davis I*"), 99 Md. App. 282 (1994), "which tied the actual-malice pleading requirement for state constitutional claims against local officials to [CJ] § 5-507(a)(1)." Specifically, she said:

> [OFFICER JONES]: [So] if you read my motion, excessive force can be brought under Article 24, 26. It is the same standard. And this is straight from Davis v. DiPino. It is actually in the jury instructions is that "To state an actionable state constitutional claim against an officer, the litigant has to prove that their rights were violated and that the officer engaged in that activity with actual malice." . . .

It is important to note that our Court's 1994 *Davis* opinion Officer Jones cited has a complicated subsequent history. Our Court's 1994 opinion was reversed and remanded by our Supreme Court (*Davis v. DiPino*, 337 Md. 642 (1995)); the case was appealed to us a

second time after remand (*Davis v. DiPino*, 121 Md. App. 28 (1998)); and then returned to our Supreme Court (*DiPino v. Davis* (hereinafter "*Davis II*"), 354 Md. 18 (1999)).

Despite the subsequent case development, the 1994 opinion Officer Jones cited does indeed tie a malice pleading requirement to CJ § 5-507(a)(1). *Davis I*, 99 Md. App. at 290 ("The parties agree that C[J] 5–[507]([a])(1) has an important operative effect on Maryland constitutional and non-constitutional claims against sworn law enforcement officers of a municipal corporation's police department. It assigns to the plaintiff the burden of pleading—and proving—that the defendant-officer acted with 'malice.'"). Therefore, we conclude Officer Jones preserved her arguments on malice and immunity under CJ § 5-507 by citing *Davis I* in her original motion for judgment and then renewing her motion at the close of all the evidence. However, for the reasons explained in the following section, our Supreme Court superceded Officer Jones' cited portion of *Davis I* in its final disposition of the case, *Davis II*, rendering her argument ultimately unpersuasive.

II. The Court Erred in Granting JNOV on the Constitutional Claim for Excessive Force.

A. Parties' Contentions

McCard first argues the circuit court erred in granting Officer Jones' Motion for JNOV because CP § 5-507 is inapplicable to employees of Prince George's County. McCard asserts the County is not a municipal corporation, but rather is a local government. McCard also argues that the qualified public official immunity conferred by CJ § 5-507 does not cover state constitutional violations since public official immunity was never

applied to state constitutional claims at common law. McCard lastly asserts that malice is not an element of a state constitutional claim for excessive force.

Officer Jones maintains that CJ § 5-507 applies to County public officials based on Maryland appellate decisions and the General Assembly's intent in enacting the statute. Officer Jones argues the County both qualifies as a "municipal corporation" under CJ § 5-507 and has been covered under the statute in prior case law. Officer Jones contends malice is an element of an excessive force claim based on *Davis I*, and argues CJ § 5-507 provides her with public official immunity for the excessive force claim because the statute's enactment conferred "extensive statutory immunity" to public officials without distinguishing between common law and constitutional torts.

B. Analysis

As it exists today, CJ § 5-507 states:

> (a)(1) An official of a municipal corporation, while acting in a discretionary capacity, without malice, and within the scope of the official's employment or authority shall be immune as an official or individual from any civil liability for the performance of the action.
>
> (a)(2) An official of a municipal corporation is not immune from liability for negligence or any other tort arising from the operation of a motor vehicle except as to any claim for damages in excess of the limits of any applicable policy of motor vehicle liability insurance.

In her Motion for JNOV, Officer Jones argued subsection (a)(1) conferred immunity to her for the state constitutional claim of excessive force because the jury found she had not acted with malice. After reviewing Maryland's appellate cases interpreting this statute

based on its legislative history, we conclude Officer Jones was not entitled to immunity because public officials are not immune from liability for constitutional claims.

a. CJ § 5-507(a)(1) Applies to the County.

As an initial matter, we agree with Officer Jones that CJ § 5-507(a)(1) applies to the County. A brief explanation of the statute's development and case law interpreting it is helpful. Prior to the statute's enactment in 1979, the common law imbued public officials with qualified immunity "against civil liability for non-malicious acts performed within the scope of [their] authority." *Bradshaw v. Prince George's Cnty.*, 284 Md. 294, 303 (1979). In *Bradshaw* and its progeny, which primarily deal with the County's waiver of governmental immunity, it remained without question that public official immunity under the common law covered individual public officials of Prince George's County specifically. *See id.* at 305 ("Thus, 'public officials' of the County are still entitled to their immunity by reason of their status."); *James v. Prince George's Cnty.*, 288 Md. 315 331 (1980) (discussing the County's liability for its public officials' torts when the officials themselves are covered under common law public official immunity); *Cox v. Prince George's Cnty.*, 296 Md. 162, 168–69 (1983) (same).

Our Supreme Court has repeatedly interpreted CJ § 5-507's legislative history to mean that subsection (a)(1) codified common law public official immunity and applied it to municipal officials. *See, e.g.*, *Ashton v. Brown*, 339 Md. 70, 116 n.23 (1995) ("[M]aterials in the bill file from the Department of Legislative Reference suggest that the purpose of the statute was to codify existing public official immunity, and not to extend

the scope of qualified immunity beyond its Maryland common law boundaries."); *Lovelace v. Anderson*, 366 Md. 690, 704 (2001) (same); *Livesay v. Baltimore Cnty.*, 384 Md. 1, 12 (2004) (same). The Court went a step further in *Livesay* by connecting the statutory codification of common law immunity with the counties:

> Under the common law, **county public officials enjoyed immunity**; accordingly, despite the seemingly narrower drafting, **§ 5–507([a])(1)[3] applies to county as well as municipal officials.** As appellees point out, a contrary holding would produce the absurd result that when city and county police respond to the same emergency, the former enjoy immunity but the latter do not. We do not believe the Legislature intended this result.

384 Md. at 12 (emphasis supplied).

Our Court has since agreed "the legislative history of § 5–507 indicates that it merely intended to codify the existing common law and make it applicable to municipal officials." *Houghton v. Forrest*, 183 Md. App. 15, 40 (2008), *aff'd in part, vacated in part*, 412 Md. 578 (2010). So, while we have also said "[m]unicipal corporations are cities, towns, and villages" without explicitly including the counties, *Houghton*, 183 Md. App. at 34, the statute applies to the counties equally based on its codification of common law immunity. *Livesay*, 384 Md. at 12.

The aforementioned holdings have far from clarified the confusion surrounding CJ § 5-507, but the debate in our case law appears to stem from a different question than the one we address today. This Court and our Supreme Court have expressed "a difference of

[3] CJ § 5-507(a)(1) and (a)(2) were originally numbered as (b)(1) and (b)(2). To avoid confusion, the subsections are cited in this opinion as they currently exist, (a)(1) and (a)(2).

opinion" as to whether the County actually falls under the definition of a "municipal corporation" for purposes of CJ § 5-507 broadly, as well as whether subsection (a)(2) of the statute—not at issue in the present appeal—applies to the County. *See Prince George's Cnty. v. Brent*, 414 Md. 334, 353–55 (2010). Before it was affirmed on appeal, this Court concluded:

> [A]ppellants' contention that *Livesay* stands for the proposition that § 5–507 applies to the counties is in error. The substance of subsection ([a])(1) applies equally to municipal corporations and the counties because it is a statement of common law public official immunity, which is applicable to both.

Prince George's Cnty. v. Brent, 185 Md. App. 42, 55 (2009). Though paradoxical at first glance, a closer reading of the opinion reveals we were drawing a distinction between the applicability of subsections (a)(1) and (a)(2) to the counties. *See id.* (holding "it is abundantly clear that" § 5-507(a)(2) does not apply to the County, although (a)(1) applies "equally to municipal corporations and the counties").

On appeal, our Supreme Court expressed a difference of opinion as to our conclusion outlined above, but affirmed the judgment regardless. The Court opined: "Under ordinary rules of statutory construction, the same meaning should be applied to the common term in the two sections [of CJ § 5-507]. Consequently, just as Baltimore County was a 'municipal corporation' under ([a])(1), so Prince George's County should be a municipal corporation under ([a])(2)." 414 Md. at 353. However, the Court expressly declined to reconsider the prevailing understandings of CJ § 5-507 because the case before it did not require as much. *Id.* at 355.

Although there has been much confusion over the breadth of "municipal corporation" under CJ § 5-507 as a whole and the application of subsection (a)(2) to the counties, we see no reason to depart from the longstanding rule that public official immunity, whether conferred by common law or CJ § 5-507(a)(1), applies to the counties.

b. The Court Erred in Granting Officer Jones' Motion for JNOV Based on the Lack of Malice.

We next address the heart of the matter before us. Although we agree CJ § 5-507(a)(1) applies to the County, it does not confer immunity for constitutional torts. McCard argues two bases of error: (1) that CJ § 5-507 does not apply to causes of action for state constitutional claims; and (2) that malice is not an element of a state constitutional claim for excessive force. We agree with both assertions.

Despite Officer Jones' citation to *Davis I* for its statement that CJ § 5-507(a)(1) imports a malice pleading requirement to both constitutional and non-constitutional claims against public officials, public official immunity under CJ § 5-507(a)(1) does not cover—and has never covered—state constitutional claims. Indeed, our Supreme Court "has consistently held that Maryland common law qualified immunity in tort suits[] . . . has no application in tort actions based upon alleged violations of state constitutional rights[.]" *Lee v. Cline*, 384 Md. 245, 258 (2004). "Thus, § 5–507's legislative history indicates that it does not apply to . . . constitutional torts." *Houghton*, 183 Md. App. at 41.

"The basis of 'public official' immunity is that a public purpose is served by protecting officials when they act in an exercise of their discretion." *Bradshaw*, 284 Md. at 304 (citations omitted). "Particularly in the case of law enforcement officers, the exercise

of discretion may call for 'decisiveness and precipitous action' in response to crises." *Id.* (citations omitted). "Thus, the situation where public official immunity is applicable involves a tort claim based upon alleged mis-judgment or a *negligent* exercise of judgment by a public official." *Lee*, 384 Md. at 261 (emphasis supplied). "On the other hand, constitutional provisions like Articles 24 or 26 of the Maryland Declaration of Rights[] . . . are specifically designed to protect citizens against certain types of unlawful acts by government officials." *Clea v. Mayor and City Council of Baltimore*, 312 Md. 662, 684–85 (1988). "Accordingly, we have applied more traditional principles for State Constitutional violations." *Davis II*, 354 Md. at 51. Put simply, "neither the local government official nor a local governmental entity has available any governmental immunity in an action based on rights protected by the State Constitution." *Id.* Our courts have consistently been clear: CJ § 5-507 immunity does not apply to state constitutional claims.

For the same reasons, malice is not an "element" of a state constitutional claim; malice is relevant only to the issue of whether to award punitive damages. As our Supreme Court has explained:

> A review of Maryland case law discloses that a public official who violates a plaintiff's rights under the Maryland Constitution is entitled to no immunity. The plaintiff may recover compensatory damages regardless of the presence or absence of malice. Punitive damages for the constitutional violation, however, are not recoverable absent a showing of actual malice.

Clea, 312 Md. at 680. Therefore, malice plays no role in adjudicating Officer Jones' liability for the constitutional claim since the jury found she used excessive force and properly refused to award punitive damages.

CONCLUSION

In sum, we conclude Officer Jones did preserve her argument for her Motion for JNOV that malice is a required showing for a state constitutional claim of excessive force. However, since that argument fails, we hold the circuit court erred in granting JNOV for the constitutional claim.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THE JURY'S VERDICT AND AWARD IS REINSTATED. APPELLEE TO PAY THE COSTS.