

Circuit Court for Baltimore City
Case No. 24-C-19-000044

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1666

September Term, 2019

MARQUIS FOSTER

v.

BALTIMORE POLICE DEPARTMENT, et al.

Berger,
Reed,
Friedman,

JJ.

Opinion by Reed, J.

Filed: July 30, 2021

*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 August 10, 2016, Marquis Foster (“Appellant”) was stopped by two Baltimore Police Department officers, Timothy Romeo and John Burns (collectively, “Appellee Officers”), in the 1600 block of Eager Street in the city of Baltimore (“August Detention”). Appellee Officer’s frisked Appellant for weapons, and subsequently detained Appellant while canvassing the area for discarded contraband. After finding nothing, Appellant was released. Fifteen (15) minutes later, an anonymous caller told police that they witnessed a male – who was stopped and let go by two undercover officers – stash a gun in the “fourth air conditioner” near 1603 Eager Street. Appellee Officers returned to the scene and located a gun in a trash can near the air conditioner referenced by the anonymous caller. Nearly two months later police arrested Appellant, pursuant to a warrant, for possession of the handgun found at Eager Street (“October Arrest”). On November 29, 2016, the State dismissed all charges against Appellant. On January 4, 2019, Appellant filed a complaint against Appellees in the Circuit Court for Baltimore City alleging that both the August Detention and the October Arrest constituted False Arrest, False Imprisonment, and Battery of Appellant. Appellee Officers responded with a motion to dismiss, or in the alternative, for summary judgment (“The Motion”). The Circuit Court granted The Motion on all counts. Appellant timely filed a notice of appeal from which this appeal follows. In bringing his appeal, Appellant presents two (2) questions for our review, which we have rephrased to three (3) questions for clarity:¹

¹ Appellant presented the following two (2) questions for review:

- I. In granting Appellees’ motion to dismiss, or in the alternative, for summary judgment, did the Circuit Court’s consideration of disputed facts outside of the pleadings convert the motion into one for summary judgment?
- II. In ruling on Appellees’ motion to dismiss, or in the alternative, for summary judgment, did the Circuit Court err in granting the motion for Appellant’s claims arising out of the August Detention?
- III. In ruling on Appellees’ motion to dismiss, or in the alternative, for summary judgment, did the Circuit Court err in granting the motion for Appellant’s claims arising out of the October Arrest?

Finding that the Circuit Court was legally correct in granting The Motion, we affirm the decision of the Circuit Court.

FACTUAL & PROCEDURAL BACKGROUND

This appeal comes from the dismissal of an amended complaint, filed by Marquis Foster (“Appellant”), against two Baltimore Police Department officers, Timothy Romeo and John Burns (“Appellee Officers”), and the Baltimore Police Department (“Appellee Department”). In his complaint, Appellant alleged that his August Detention, and his subsequent October Arrest, each constituted false imprisonment, false arrest, and battery. Appellant’s complaint included references to the statement of charges (“Statement of Charges”) authored by Appellee Romeo. The Statement of Charges provides a factual narrative of the events of the August Incident.

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- I. Did the Circuit Court Err in Granting Summary Judgment When There is a Dispute of Material Fact, Thereby Dismissing All Claims Relating to the August 10, 2016 Encounter?
 - II. Did the Circuit Court Err in Finding that Appellant Failed to Sufficiently Plead Lack of Legal Justification Relating to the October 25/26, 2016 Arrest, Thereby Dismissing All Claims Relating to the October 25/26, 2016 Arrest?

a) August Detention

On August 10, 2016, Appellee Officers monitored the Clay Court public housing area while operating an unmarked police vehicle in plain clothes. As they drove down Eager Street, Appellee Officers observed Appellant with two other individuals and noted Appellant adjusting what Officer Appellees believed to be an item, or items, in his front waistband area. Suspicious of Appellants movements, Appellee Officers quickly stopped the vehicle and backed the vehicle toward Appellant’s group. At that point, Appellee Officers allegedly saw Appellant look in their direction and flee on foot out of Appellee Officers’ field of vision.

Appellee Officers pursued Appellant to a private public housing complex where Appellant, upon seeing the officers, raised his hands and approached Appellee Officers. Appellee Romeo asked Appellant if he lived in the housing complex, to which Appellant responded that he did not. Appellee Romeo asked for Appellant’s identification, and informed Appellant that the complex was private property and that Appellant was trespassing. While Appellee Romeo questioned Appellant, Appellee Burns canvassed the area from which Appellant had fled to search for potential discarded contraband. After finding nothing, Appellee Officers released Appellant and left the scene. According to the Statement of Charges, the detention lasted approximately ten to twenty minutes.

Approximately fifteen (15) minutes after Appellee Officers left the scene, an anonymous 911 caller told police that they witnessed a male – who was stopped and let go by two undercover officers – stash a gun behind the “fourth air conditioner” near 1603

Eager Street.² Dispatch relayed the information to Appellee Officers, who returned to Eager Street to search for the gun referenced in the anonymous caller’s tip. While searching the area, Appellee Officers discovered a gun in a trash can adjacent to the air conditioner referenced in the anonymous call.

b) October Arrest

Based on the anonymous call and the gun found at the scene, Appellee Romeo authored the Statement of Charges, charging Appellant with possession of the handgun found at Eager Street. On August 30, 2016, a warrant was issued for Appellant’s arrest based on information in Appellee Romeo’s Statement of Charges.

On or about October 25, 2016, Appellant was arrested by the Baltimore Police Department (“October Arrest”). Appellant was committed on October 26, 2016 and released on October 29, 2016 after posting bond. On November 29, 2016, the State dismissed all charges against Appellant and a *Nolle Prosequi* was entered in Appellant’s case.

c) Procedural Background

On January 20, 2017, Appellant notified the State of Maryland and Baltimore City of his intention to initiate legal action against the Appellee Department and Appellee Officers (collectively, “Appellees”). On January 18, 2018, Appellant appeared before the Civilian Review Board and alleged that Appellee Officers’ actions constituted police

² According to the call transcript, the anonymous caller initially reported the street location as “Eager Street.” However, later in the call, the caller referred to the location as “Eagle Street.” Nevertheless, after the dispatcher sought clarification of the street name, the caller confirmed that the street name was Eager Street.

misconduct. The Civilian Review Board sustained Appellant’s complaints against Appellee Officers for False Imprisonment, False Arrest, and Excessive Force.³

On January 4, 2019, Appellant filed a complaint against Appellees in the Circuit Court for Baltimore City alleging that both the August Incident and the October Arrest constituted False Arrest, False Imprisonment, and Battery of Appellant. Appellee Baltimore Police Department filed a Motion to Dismiss on May 10, 2019. On June 20, 2019, Appellee Officers filed a Motion to Dismiss, or in the Alternative for Summary Judgment (“The Motion”). In their brief in support of The Motion, Appellee Officers argued that the Statement of Charges, which Appellant referenced in his amended complaint, showed that Appellee Officers had legal justification for the August Detention and October Arrest based on Appellant’s unprovoked flight in a high crime area. However, in his brief opposing The Motion, Appellant stated the following:

Defendants’ attempt to reframe this stop as a *Terry* stop is largely dependent upon their classification of Foster “fleeing.” However, that fact is not to be found anywhere in the Complaint. That is a new fact that they have inserted into the proceedings. Their position may be that Foster engaged in “unprovoked flight,” but that is not Foster’s position and it is an allegation outside of the Complaint.

³ The Civilian Review Board stated the following in its Letter of Findings:

The Board sustained the allegations [of False Arrest, False Imprisonment, and Excessive Force] for the following reasons: (1) the complainant’s fingerprints were not on the gun; (2) the officers did not observe the complainant with the gun at any time; (3) the officers searched the complainant and found no weapon; and (4) the officers arrested complainant [six weeks] later. Consequently, the Board recommends the following disciplinary action against the officers: 4-day suspension and a Simple Letter of Reprimand.

During a hearing on The Motion, Appellees again asserted that “[Appellant] now concedes the fact that he was...racing away from officers upon seeing them.” In response, Appellant reiterated his position:

[Appellee] would certainly seem to be suggesting that the mere fact that the Plaintiff references the [Statement of Charges] somehow means that we have to assume that all of the facts alleged in there are not disputed. And that's just not true at all.

...

For clarification, I did not concede that [Appellant] fled.

Following a hearing on The Motion in the Circuit Court of Baltimore City, the Circuit Court granted The Motion on all counts after finding that Appellant failed to adequately allege that Appellee Officers lacked legal justification for the August Detention and October Arrest. In ruling on The Motion, the Circuit Court considered the Statement of Charges and the anonymous 911 call transcript to be a part of the original pleadings.

The Circuit Court explained:

[Appellant] did not provide any information in the Complaint as to what lead to Plaintiff's detention on August 10, 2016. However, he provided partial excerpts from Defendant Romeo's Application for Statement of Charges and did not assert that the Application contained false statements. During oral arguments [Appellant] argued that there were questions as to accuracy of the 911 Caller's information, he did not contend that the facts leading to [Appellant's] detention on August 10 were false. Thus, the Court will consider the facts as stated by [Appellee] Romeo in his sworn Application for Statement of Charges.

Accordingly, the Circuit Court considered the factual allegations contained within the Statement of Charges and 911 transcript in reaching its decision to dismiss Appellant's claims of false arrest, false imprisonment, and battery.

On October 16, 2019, Appellant timely filed a notice of appeal challenging the

Circuit Court’s decision to dismiss Appellant’s suit for failure to state a claim.

STANDARD OF REVIEW

We review the grant of a motion to dismiss as a question of law to determine whether the trial court was legally correct in granting the motion. *See Shenker v. Laureate Educ., Inc.*, 411 Md. 317 (“We review the grant of a motion to dismiss as a question of law”). In reviewing a motion to dismiss for failure to state a claim, we are generally limited to the factual allegations within the four corners of the complaint and its incorporated exhibits. *See RRC Northeast*, 413 Md. at 643 (“Consideration of the universe of ‘facts’ pertinent to the court’s analysis of [a motion to dismiss for failure to state a claim] are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.”) (citing *Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004)).

“[T]he introduction of affidavits of fact will [generally] operate to convert a motion to dismiss into a motion for summary judgment.” *Worsham v. Ehrlich*, 181 Md. App. 711 (2008) (citing *Beyond Systems, Inc. v. Realtime Gaming*, 388 Md. 1, 12 n. 10 (2005); and *Green v. H & R Block, Inc.*, 355 Md. 488, 501 (1999)). However, “[w]here...a document...merely supplements the allegations of the complaint, and the document is not controverted, consideration of the document does not convert the motion into one for summary judgment.” *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (citing *Margolis*, 221 Md. App. at 710, n. 4.; and *Smith v. Danielczyk*, 400 Md. 98, 105 (2007)).

In reviewing a grant of a summary judgment, appellate courts are first concerned with whether a genuine dispute of material fact exists and then whether the movant is

entitled to summary judgment as a matter of law. *Grimes v. Kennedy Krieger Inst, Inc.*, 366 Md. 29, 71 (2001) (quoting *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 113 (2000)). ““A material fact is a fact the resolution of which will somehow affect the outcome of the case.”” *Grimes*, 366 Md. at 72 (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)). In reviewing the grant of summary judgment, “an appellate court must consider the facts stated, and the proper inferences to be drawn therefrom, in the light most favorable to the party against whom the motion is made.” *Burwell v. Easton Memorial Hospital*, 83 Md. App. 684, 687 (1990). If we find no dispute of material fact, we must then determine if the court was correct in granting summary judgment as a matter of law. *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 386 (1997).

DISCUSSION

I. **Consideration of disputed facts in the Statement of Charges when ruling on Appellant’s August Detention claims converted the motion to dismiss into a motion for summary judgment.**

A. **Parties’ Contentions**

Appellant contends that the Circuit Court impermissibly considered facts outside of the complaint in reaching its decision to dismiss Appellant’s claims relating to the August Incident. Appellant argues that the Statement of Charges and the 911 call transcript – both of which were referenced in Appellant’s amended complaint – contain facts that Appellant contested in his response to Appellees’ motion to dismiss. Most notably, Appellant stated that it was not his “position” that he engaged in “unprovoked flight” during the August Incident, and that any allegation to the contrary was “outside of the complaint.” Appellant contends that the Circuit Court’s dismissal, having considered facts from the Statement of

Charges and 911 call transcript, should be treated as a grant of summary judgment rather than a motion to dismiss.

In response, Appellees argue that while Appellant ostensibly disputed that he engaged in unprovoked flight, he did not provide any affirmative facts that contradicted any of the information in the Statement of Charges or 911 call. Namely, Appellees note that Appellant’s amended complaint did not provide any factual allegations concerning the events leading to his detention by Appellee Officers on August 10, 2016. Moreover, Appellees assert that Appellant had two opportunities to provide his version of events contradicting the factual allegations in the Statement of Charges but failed to do so.⁴ Accordingly, Appellees argue that Appellant’s reference to the Statement of charges and 911 call transcript in his complaint, and subsequent failure to offer facts disputing either document, effectively incorporated both documents into the complaint. Thus, Appellees contend that the Circuit Court properly considered both documents to be a part of the pleadings, and thereby argues that the court’s dismissal should not be treated as a grant of summary judgment.

B. Analysis

We initially note that the Circuit Court, in ruling on Appellee Officers’ motion to dismiss or, in the alternative, for summary judgment (“The Motion”), did not clearly

⁴ Appellees note that Appellant had the opportunity to provide his version of events in (1) Appellant’s motion in opposition to Appellees’ motion to dismiss; and (2) during the hearing on Appellees’ motion to dismiss. In Appellant’s motion in opposition to Appellees’ motion to dismiss, Appellant stated that “it is not [his] position” that he fled. Likewise, during the hearing on Appellees’ motion to dismiss, Appellant stated “I did not concede that Mr. Foster fled.”

indicate whether it was dismissing or granting summary judgment for Appellant’s claims relating to the August Detention. Initially, the Circuit Court recited the standard of review for a motion to dismiss before proceeding with its analysis of the August Detention. This recitation indicated that the Circuit Court was treating The Motion as a motion to dismiss. However, the Circuit Court continued by considering facts from the Statement of Charges when assessing Appellant’s August Detention claims:

[Appellant] did not provide any information in the Complaint as to what lead to Plaintiff’s detention on August 10, 2016. However, he provided partial excerpts from Defendant Romeo’s Application for Statement of Charges and did not assert that the Application contained false statements. During oral arguments [Appellant] argued that there were questions as to accuracy of the 911 Caller’s information, he did not contend that the facts leading to [Appellant’s] detention on August 10 were false. Thus, the Court will consider the facts as stated by [Appellee] Romeo in his sworn Application for Statement of Charges.

Apparently, the Circuit Court considered the Statement of Charges to be incorporated into Appellant’s amended complaint by reference, effectively allowing the Circuit Court to consider the facts in the Statement of Charges in ruling on Appellees’ motion to dismiss Appellant’s amended complaint for failure to state a claim. Conversely, the conclusion section of the Circuit Court’s Memorandum Order consisted of one sentence, stating: “[f]or the above stated reasons, there is no genuine issue of material fact, and Defendants are entitled to judgment as a matter of law.” Thus, while setting the stage for a motion to dismiss, the Circuit Court’s order concluded by reciting the standard for summary judgment. Nonetheless, we must decide which motion the Circuit Court granted in this case. We hold that the Circuit Court converted The Motion into a motion for summary judgment by considering the facts within the Statement of Charges in reaching its decision.

We explain.

Maryland Courts are generally limited to the factual allegations within the four corners of the complaint and its incorporated exhibits. *See RRC Northeast*, 413 Md. at 643.

Under Maryland Rule 2-322(c),

[i]f, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

Accordingly, “the introduction of affidavits of fact will [generally] operate to convert a motion to dismiss into a motion for summary judgment.” *Worsham v. Ehrlich*, 181 Md. App. 711 (2008) (citing *Beyond Systems, Inc. v. Realtime Gaming*, 388 Md. 1, 12 n. 10 (2005); and *Green v. H & R Block, Inc.*, 355 Md. 488, 501 (1999)). However, “[w]here...a document...merely supplements the allegations of the complaint, and the document is not controverted, consideration of the document does not convert the motion into one for summary judgment.” *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (citing *Margolis*, 221 Md. App. at 710, n. 4.; and *Smith v. Danielczyk*, 400 Md. 98, 105 (2007)). The Statement of Charges was a sworn document based on Appellee Romeo’s personal knowledge. Thus, it was an affidavit of fact which will generally “operate to convert a motion to dismiss into a motion for summary judgment.”

In Appellant’s amended complaint, Appellant referenced the Statement of Charges in the following averments related to his October Arrest:

6. On August 30, 2016 an Application for Statement of Charges was filed by Romeo indicating that approximately 15 minutes after they left the stop on August 10, 2016 an anonymous call came in indicating that a male

allegedly put a gun in the “4th air conditioner from the corner.”

7. In the Application for Statement of Charges led by Romeo, he indicated that both he and Burns immediately responded back to the area at which Foster had been stopped, canvassed the area, and located a gun.

8. As a direct result of this Application for Statement of Charges, on or about October 25, 2016 Foster was arrested and bond was initially denied. Foster was committed on October 26, 2016 and released after being able to post bond on October 29, 2016.

Appellant did not attach the Statement of Charges as an exhibit to the complaint. However, Appellee Officers, in their brief of law supporting The Motion, attached the Statement of Charges and 911 call transcript as exhibits to The Motion. While Appellees Officers and the Circuit Court each asserted that Appellant did not claim that any information in the Statement of Charges was false, that assertion is not supported by the record. In Appellant’s reply brief in opposition to The Motion, Appellant stated:

Defendants’ attempt to reframe this stop as a *Terry* stop is largely dependent upon their classification of Foster “fleeing.” However, that fact is not to be found anywhere in the Complaint. That is a new fact that they have inserted into the proceedings. *Their position may be that Foster engaged in “unprovoked flight,” but that is not Foster’s position* and it is an allegation outside of the Complaint.

(emphasis added). Moreover, at oral argument on The Motion, Appellant repeated his issues with the facts of the August Detention as stated in the Statement of Charges:

[Appellee] would certainly seem to be suggesting that the mere fact that the Plaintiff references the [Statement of Charges] somehow means that we have to assume that all of the facts alleged in there are not disputed. And that’s just not true at all...For clarification, I did not concede that [Appellant] fled.

Thus, the Circuit Court’s assertion, that Appellant “did not contend that the facts leading to [Appellant’s] detention on August 10 were false,” is technically incorrect. Though, as

we discuss *infra* at 17-18, Appellant did not properly dispute the facts in the Statement of Charges for summary judgment purposes. The fact that Appellant fled is a fact found nowhere in the complaint.

Appellee argues that without the Statement of Charges, Appellant's August Detention claims were insufficient because the factual averments did not provide any explanation of the events leading to his August Detention. However, we find it difficult to imagine what other predicate events Appellant should have included in his complaint if he disputes the fact that he fled. The basis for the stop was that Appellant fled in a high crime area. Thus, assuming *arguendo* that Appellant did not flee, his averment that he was simply stopped and frisked without his consent would be a sufficient statement of the facts to support his August Detention claims. It would be premature to require Appellant in his initial pleading to identify each falsehood or inaccuracy within a Statement of Charges – which was not attached as an exhibit, and which Appellant referenced only in relation to his October Arrest claims. A plain statement of facts sufficient to state his August Detention claims was all that was required.

Appellees further argue that the extraneous documents attached to a motion to dismiss only convert the motion to a motion for summary judgment when questions are raised as to a document's authenticity. (Appellee Br. at 20). In support of this contention, Appellees cite *Smith v. Danielczyk*. 400 Md. at 105. However, Appellees' contention is misplaced. In *Smith*, the Court of Appeals stated

Because there seems to be *no dispute* regarding the extraneous material appended to [a] motion to dismiss and *none of the relevant factual averments* by appellees in their memorandum or *made by appellants in response to the motion were*

controverted, we shall regard the exhibits and the additional averments as simply supplementing the allegations in the complaint

Id. (emphasis added) (citing *Pension Ben. Guar. Corp. v. White Consol. Industries, Inc.*, 998 F.2d 1192 (1993)). The authenticity of the document was not an issue in *Smith*, but it was an issue in the case *Smith* relied upon. In *Pension Ben. Guar. Corp. v. White Consol. Industries, Inc.*, the 3rd Circuit held “that a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss *if the plaintiff’s claims are based on the document.*” 998 F.2d at 1196 (emphasis added) (citing *Cortec Indus., Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 48 (2d Cir. 1991)). In the present case, while Appellant did reference the statement of charges in his complaint, none of Appellant’s *August Detention* claims were based on the Statement of Charges. Instead it was Appellant’s *October Arrest* claims which required reference to the Statement of Charges to show the document utilized in effectuating Appellant’s October Arrest and the purported probable cause for his October Arrest.

Maryland Courts have been far more willing to find that a claim is “based on” a document, for incorporation purposes, when the document is a contract in a breach of contract action. *See Advance Telecom*, 224 Md. App. 164 (Breach of contract case holding that the contract at issue in the case – teaming agreement – was incorporated into the complaint by reference even though document was not attached to complaint as exhibit); *see also Margolis*, 221 Md. App. 703 (Holding that Deposit Account Agreement was incorporated into complaint, even though not attached as an exhibit, where complaint

repeatedly alleged that the disclosures in the Deposit Account Agreement did not satisfy the Consumer Protection Act.).

In the present case, Appellant’s August Detention claims were not “based on” the Statement of Charges. While Appellant did reference the Statement of Charges in his complaint; none of Appellant’s factual averments relating to his August Detention claims relied on any facts within the Statement of Charges. Instead, Appellant invoked the Statement of Charges to the support his October Arrest claims. Appellant referenced the Statement of Charges merely to identify the document that Appellee Officers submitted to effectuate Appellants October Arrest. Moreover, here we are not dealing with a mutually executed contract. We are dealing with a one-sided account of the events surrounding the August Detention based on Appellee Romeos personal knowledge. The question in these cases is twofold: (1) whether the document is authentic; and (2) whether the document is relied on by the complaint. Both must be true to incorporate a document supplementing a complaint. *See e.g. Gardiner Family, LLC v. Crimson Res. Mgmt. Corp.*, 147 F. Supp. 3d 1029, 1031 (E.D. Cal. 2015) (When considering a motion to dismiss, “[d]ocuments not attached to a complaint may be considered if no party questions their authenticity *and* the complaint relies on those documents.”) (emphasis added).

In sum, the Statement of Charges *was* controverted by Appellant, and the Circuit Court’s subsequent consideration of facts within the Statement of Charges converted The Motion into a motion for summary judgment. *See Advance Telecom*, 224 Md. App. at 175 (“[w]here...a document...merely supplements the allegations of the complaint, *and the document is not controverted*, consideration of the document does not convert the motion

into one for summary judgment.”) (emphasis added); *see also* MD Rule 2-322(c) (“If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment...”). Moreover, Appellant had a “reasonable opportunity to present all material made pertinent” to the motion for summary judgment because The Motion was, in the alternative, a request for summary judgment. *See* MD Rule 2-322(c) (“all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501”).

Thus, we hold that the Circuit Court considered facts outside of the complaint in deciding Appellant’s August Detention claims. Accordingly, we will treat the Circuit Court’s judgment relating to those claims as one for summary judgment. *See* MD Rule 2-322(c) (“If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment...”). Notably, Appellant had a “reasonable opportunity to present all material made pertinent” to the motion for summary judgment because Appellees motion was, in the alternative, a request for summary judgment. *See* MD Rule 2-322(c) (“all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501”).

Having held that the Circuit Court effectively granted summary judgment against Appellant’s August Detention claims, we proceed to determine whether summary judgment against Appellant’s August Detention claims was appropriate.

II. Appellant failed to sufficiently demonstrate a material dispute of fact, and the undisputed facts show legal justification for Appellant’s August Detention.

A. Parties’ Contentions

Appellant contends that there is a genuine dispute of material fact making summary judgment inappropriate. Appellant argues that the Circuit Court erred in granting The Motion because a genuine dispute of material fact existed as to whether Appellant engaged in unprovoked flight. Further, Appellant urges that without unprovoked flight, Appellees’ proposed legal justification (reasonable suspicion) for the August Incident detention fails. Thus, Appellant argues that he has sufficiently demonstrated a genuine dispute of material fact.

In response, Appellees argue that Appellant failed to properly demonstrate a factual dispute. Appellees note that Appellant, while denying the fact that he fled from Appellee Officers, has not provided an affirmative statement of fact explaining his version of events. Appellees point to Appellant’s statements: (1) that “[it] is not [Appellant’s] position” that he engaged in unprovoked flight; and (2) that he “did not concede” that he fled. Neither of these statements, Appellees argue, affirmatively asserted that Appellant did not engage in unprovoked flight. Accordingly, Appellees contend that Appellant failed to demonstrate a genuine dispute of material fact.

B. Analysis

Having decided that the Circuit Court granted a motion for summary judgment, we must decide whether summary judgment on Appellant’s August Detention claims was appropriate. As an initial matter we find that Appellant failed to sufficiently demonstrate

a material dispute of fact, as required under Md. Rule 2-501(b), relating to the August Detention. We explain.

“A material fact is one that will somehow affect the outcome of the case.” *Fearnow v. Chesapeake & Potomac Tel. Co. of Md.*, 104 Md. App. 1, 49 (1994) (citations omitted); *see also Keesling v. State*, 288 Md. 579, 583 (1980) (Stating that a disputed fact only takes on significance and creates a genuine issue when it is material to the outcome of the case.). In the case *sub judice*, the allegation that Appellant fled from officers in the lead up to the August Detention is material to the outcome of Appellant’s false arrest, false imprisonment, and battery claims relating to the August Detention. Both parties agree that the success of Appellant’s August Detention claims – aside from potential issues of immunity which are not before us on appeal – turns on whether Appellant can establish that Appellee Officers lacked legal justification for their detention of Appellant. Further, the legal justification (reasonable suspicion) asserted by Appellees relies on the fact the Appellant fled from Appellee Officers in a high crime area. Without Appellant’s unprovoked flight, Appellee Officers would not have been legally justified in stopping and frisking Appellant, nor in detaining Appellant while they canvassed the surrounding area, during the August Detention. However, Appellant failed to properly demonstrate the existence of any factual dispute relating to his unprovoked flight.

Appellant denied that he fled from officers in his reply brief, and again at oral argument. Notably, however, Appellant’s brief in opposition to The Motion was not accompanied by a supporting affidavit of fact, nor did it point to any other evidence in the record demonstrating a factual dispute as required under Md. Rule 2-501(b):

A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. *A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.*

(Emphasis added). A response to a motion for summary judgment, alleging a dispute of material fact, may be supported by “any type of evidence that is admissible at trial.” The party opposing summary judgment must demonstrate a genuine dispute of fact “by producing factual assertions, under oath, based on the personal knowledge of the one swearing out an affidavit, giving a deposition, or answering interrogatories.” *Lowman v. Consolidated Rail Corp.*, 68 Md. App. 64, 70 (1986) (citing *Hoffman-Chevrolet, Inc. v. Washington County National Savings Bank*, 297 Md. 691, 712 (1983)). Most notably, “[b]ald, unsupported statements or conclusions of law are insufficient.” *Lowman*, 68 Md. App. at 70 (citing *Brown v. Suburban Cadillac, Inc.*, 260 Md. 251, 257 (1971)).

In the present case, Appellant’s claim that he did not flee from officers is the type of bald, unsupported statement that is insufficient to create a genuine dispute of fact. Appellant could have provided an affidavit under oath stating that he did not flee from officers. In fact, Appellees noted as much in their reply brief in support of the motion. *See* Record Extract at P. 92 (“Plaintiff...argues, absent supportive affidavit, that he never engaged in unprovoked flight”). Appellant’s flight, or absence thereof, is a matter within Appellant’s knowledge, and disputing that fact through a proper affidavit would have created a genuine dispute making summary judgment inappropriate. However, Appellant

failed to do so. Accordingly, we find that Appellant failed to create a genuine dispute of material fact relating to the August Detention, making summary judgment appropriate. Thus, we turn to assess whether the Circuit Court was legally correct in granting summary judgment after finding that Appellee Officers had legal justification for the August Detention based on the uncontradicted facts in the Statement of Charges.

“When the cases speak of legal justification we read this as equivalent to legal authority.” *Ashton v. Brown*, 339 Md. 70, 120 (1995) (quoting *Great Atl. & Pac. Tea Co. v. Paul*, 256 Md. 643, 655 (1970)). Moreover, we determine whether legal justification exists in a particular case based on the law of arrest. *Id.* Thus, we must first determine whether Appellee Officers’ August Detention of Appellant constituted a *Terry Stop*, requiring reasonable suspicion, or a de facto arrest, requiring probable cause. We find that the August Detention constituted a *Terry Stop* requiring reasonable suspicion. We explain.

To determine whether a detention was a stop or an arrest, we consider “the length of the detention, the investigative activities that occur during the detention, and...whether the suspect is removed from the place of the stop to another location.” *Johnson v. State*, 154 Md. App. 286, 297 (2003). Moreover, “[i]n determining whether an investigatory stop is in actuality an arrest requiring probable cause, courts consider the ‘totality of the circumstances.’” *In re David S.*, 367 Md. 523, 535 (2002) (quoting *United States v. Patterson*, 648 F.2d 625, 632 (9th Cir.1981)). Under the totality of circumstances approach, no one factor is dispositive. *See Ferris v. State*, 355 Md. 356, 376 (1999). In the present case, the stop lasted approximately 10-20 minutes during which Appellee Officers frisked Appellant and surveyed the surrounding area for discarded contraband.

Appellant was not removed from the scene, handcuffed, or otherwise physically restrained, and was allowed to leave after the Appellee Officers' suspicion was dispelled. These facts indicate that the August Detention amounted to a *Terry Stop*. However, Appellant contends that the stop was converted into a de facto arrest when Appellee Officers detained Appellant to canvass the surrounding area for discarded contraband. While it is true that expanding the scope of a *Terry Stop* beyond its permissible limits may convert the stop into a de facto arrest, we are not convinced that is what happened here. *See e.g. Reid v. State*, 428 Md. 289 (2012) (Holding that *Terry Stop* was converted to de facto arrest when police shot a suspect twice in the back with metal darts.).

In *Carter v. State*, we upheld a delay during a *Terry Stop* while officers waited eight-minutes for a drug-sniffing dog to arrive on scene. 143 Md. App. 670 (2002). While that case involved a *Terry Stop* of an automobile, courts have similarly allowed brief detentions during a pedestrian *Terry Stop* while officers search the area of a suspects unprovoked flight or evasive movements. *See United States v. Vasquez*, 638 F.2d 507, 523–24 (2d Cir. 1980) (allowing restraint of suspect while officers searched a shopping bag, which was dropped at suspect's feet and suspected of containing a weapon); *see also United States v. Caruthers*, 458 F.3d 459, 468–69 (6th Cir. 2006) (upholding *Terry Stop* where police searched area in which detainee “was observed in a position suggesting that he was discarding what ... might have been a gun”); *United States v. Soto–Cervantes*, 138 F.3d 1319, 1323 (10th Cir.1998) (upholding *Terry Stop* while police searched nearby area after noting detainee's furtive movements “could support an inference that the man had left to hide something upon spotting the officers”); *United States v. Robinson*, 30 F.3d 774, 779

(7th Cir.1994) (upholding *Terry Stop*, which lasted twenty to thirty minutes, while police searched surrounding area for discarded contraband).

In *Michigan v. Summers*, the Supreme Court provided the reasoning for allowing officers to perform an area search during a *Terry Stop* initiated in response to unprovoked flight:

If the purpose underlying a Terry stop—investigating criminal activity—is to be served, the police must under certain circumstances be able to detain the individual . . . while it is determined if in fact an offense has occurred in the area, a process which might involve checking certain premises, locating and examining objects abandoned by the suspect.

452 U.S. 692, 700 n. 12 (1981) (*quoting* 3 LaFave, Search and Seizure § 9.2, at 36–37 (1st ed.1978)). Accordingly, in the case *sub judice*, Appellee Officers did not exceed the scope of the *Terry Stop* when they searched the surrounding area over which Appellant had fled. Thus, Appellee Officers only needed reasonable articulable suspicion that criminal activity was afoot.

The Court of Appeals has held that a suspect’s unprovoked flight in a high crime area provides officers with reasonable suspicion to conduct a *Terry Stop*. See *Bost v. State*, 406 Md. 341, 359 (2008) (finding reasonable suspicion to support a *Terry Stop* where “Appellant was seen by the police in a high crime, drug trafficking area” and “Appellant fled from the police and the flight was unprovoked.”); see also *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (holding that officers had reasonable suspicion to conduct *Terry Stop* where suspect engaged in unprovoked flight from police in an area known for heavy narcotics activity). As discussed *supra* at 17-18, Appellant did not properly refute – for the purposes of summary judgment – that he engaged in unprovoked flight from officers.

Moreover, neither party disputes that Appellant was detained in a high crime area. Accordingly, Appellee Officers had the requisite suspicion necessary to conduct a *Terry Stop* of Appellant. Thus, Appellee Officers had legal justification for the August Detention of Appellant, and the Circuit Court correctly found that Appellees are entitled to judgment as a matter of law for Appellant's August Detention claims.

III. Summary Judgment against, and/or dismissal of, Appellant's October Arrest claims was appropriate because the uncontroverted facts show legal justification for the October Arrest.

A. Parties' Contentions

Appellant contends that Appellee Officers knew or should have known that they did not have probable cause to support Appellant's October Arrest. Namely, Appellant points to several uncontroverted facts which, according to Appellant, undermine probable cause for his October Arrest: (1) the gun Appellee Officers recovered was not found on Appellant's person; (2) the gun was found on someone else's property; (3) the gun was not found where the anonymous 911 caller said it would be. Based on these facts, and their reasonable inferences, Appellant argues that Appellee Officers lacked probable cause for the October Arrest.

In response, Appellees argue that probable cause does not require certainty that a felony was committed. Appellees note that Appellant did not dispute any of the information from the Statement of Charges relating to the October Arrest, but instead merely argues that the facts did not constitute probable cause to issue a warrant. Accordingly, Appellees argue that Appellant failed to adequately allege that Appellee

Officers lacked legal justification for the October Arrest.

B. Analysis

As an initial matter, it bears mentioning that the Circuit Court’s decision relating to Appellant’s October Arrest claims expressly stated that it was treating the motion as a motion to dismiss. This express statement was not found in the Circuit Court’s analysis of Appellant’s August Detention claims. Regardless, if the Circuit Court considered matters outside of the pleadings, the motion is treated as a motion for summary judgment notwithstanding the Circuit Court’s grant of a motion to dismiss. In this case, the Circuit Court arguably may have limited its analysis of the October Arrest to the four corners of the complaint. However, we need not make that determination here because the fact that Appellant was arrested pursuant to a facially valid warrant is not in dispute for purposes of a motion to dismiss or summary judgment. This fact is evident on the face of the Statement of Charges – without needing to reference the facts of the August Detention therein – and is a matter of public record we may judicially notice on review. Moreover, the fact that the Circuit Court treated The Motion as a motion to dismiss does not limit our review because “when reviewing a ruling on a motion to dismiss, the [we] will affirm the circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.” *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164 (2015).

As previously discussed, lack of legal justification is an essential element for a claim of false arrest, false imprisonment, or battery against a police officer. Notably, “[a]n arrest warrant that is facially valid provides legal authority to arrest and detain the person who is

the subject of the warrant.” *Dett v. State*, 161 Md. App. 429, 443 (2005). Moreover, “a law enforcement officer who detains a person based on an arrest warrant that is valid on its face does so with legal authority, even though the warrant was improperly issued by the court.” *Id.* (quoting *Ashton v. Brown*, 339 Md. 70, 120 (1995)). Thus, any claim of false imprisonment, false arrest, or battery fails when predicated on an arrest under a facially valid warrant.

In the present case, Appellant’s October Arrest was made pursuant to a facially valid warrant. Thus, Appellant’s October Arrest claims must fail. To the extent that Appellant argues that Appellee Officers “knew or should have known they lacked probable cause to arrest [Appellant]” during the October Arrest, his argument is more properly characterized as a claim for malicious prosecution. *See Montgomery Ward v. Wilson*, 339 Md. 701 (1995) (“the false imprisonment tort does not lie against... the arresting officer where the plaintiff...is arrested by a police officer pursuant to a facially valid warrant. Rather, to the extent that the instigator acts maliciously to secure the warrant for the plaintiff’s arrest, the plaintiff’s cause of action against the instigator is malicious prosecution.”).

Appellant did not dispute that he was arrested pursuant to a facially valid warrant during the October Arrest. That undisputed fact, alone, is sufficient to warrant summary judgment against Appellant for his October Arrest claims of False imprisonment, False Arrest, and Battery. Similarly, that fact is sufficient to warrant dismissal of Appellant’s October Arrest claims of False Imprisonment, False Arrest, and Battery. Accordingly, we hold that the Circuit Court did not err in granting Appellees’ motion to dismiss, or in the alternative, for summary judgment, relating to Appellant’s October Arrest claims.

CONCLUSION

We hold that the Circuit Court converted Appellees’ motion to dismiss, or in the alternative, for summary judgment (“The Motion”), into a motion for summary judgment by considering matters outside of the pleadings when ruling on Appellant’s August Detention claims. Moreover, we hold that the Circuit Court correctly found that Appellees were entitled to judgment as a matter of law against Appellant’s August Detention claims. Finally, we hold that the Circuit court was correct in granting The Motion with respect to Appellant’s October Arrest claims.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

Circuit Court for Baltimore City
Case No. 24-C-19-000044

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1666

September Term, 2019

MARQUIS FOSTER

v.

BALTIMORE POLICE DEPARTMENT, et al.

Berger,
Reed,
Friedman,

JJ.

Concurring Opinion by Friedman, J.

Filed: July 30, 2021

*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.

I disagree with the reasoning but not the conclusion reached by my colleagues in the majority. The source of that disagreement is in our understanding of the nature of the application for the statement of charges and its role in this litigation. *First*, my colleagues note that it was submitted by the defendant. From there, they hold that it is outside the pleadings and therefore, by operation of Rule 2-322(c), converts the motion to dismiss into a motion for summary judgment. Slip op. at 15. *Second*, my colleagues note that the application for the statement of charges was sworn under oath and from there, decide that it is akin to an affidavit. Slip Op. at 11. By contrast, I would hold that because the application for statement of charges was described in—and was fundamental to—plaintiff’s complaint, it did not necessarily convert the motion to dismiss into a motion for summary judgment. *Heneberry v. Pharoan*, 232 Md. App. 468, 477 (2017) (consideration of a consent to medical treatment form did **not** convert motion); *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175-76 (2015) (consideration of ‘teaming agreement’ did **not** convert motion). I would also hold that the manner of its preparation—that it was sworn under oath—doesn’t turn it into an affidavit (or make the motion to which it was attached one for summary judgment). Foster was still in control of his pleadings and could have either amended his complaint to allege that he didn’t flee or filed an affidavit in which he attested to the fact that he didn’t flee. Although the procedural effects of these choices would have been different, either would have prevented the circuit court from granting a motion to dismiss. Foster, however, did neither. At that point, the state of the pleadings, by which I mean the complaint and the exhibit, was that Foster had alleged that

he had fled from police in a high crime neighborhood, which no one disputes was a legally sufficient basis for a *Terry* stop. At that point, Foster had failed to plead a cause of action upon which relief could have been granted. Thus, I think the circuit court was correct in granting the City's motion to dismiss and I would affirm the decision in its entirety.