Circuit Court for Baltimore City
Case No. 24C17-003736

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1974

September Term, 2017

IRENE D. HILDEBRANDT

v.

STATE OF MARYLAND, ET AL.

Wright,
Arthur,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 23, 2019

This is an appeal of a decision from the Circuit Court for Baltimore City. On November 27, 2017, the circuit court dismissed appellant's, Irene D. Hildebrandt, claim against appellees, the State of Maryland, the Maryland Transportation Authority ("MDTA"), and MDTA Police Senior Officer Ivan Griffin ("Officer Griffin"). Appellant filed suit against Officer Griffin, the State of Maryland, and the MDTA for injuries sustained as the result of Officer Griffin's allegedly reckless and unnecessary high-speed automobile pursuit on a single lane exit ramp. The State of Maryland filed a motion to dismiss the claim against all the defendants. The original claim was amended. The circuit court dismissed the amended complaint for failing to state a claim upon which relief would be granted.

The question raised on appeal, which we have condensed to one question for ease of answering, is:

Whether the trial court erred in dismissing the First Amended Complaint?[1]

[1] The appellant presented the following questions:

1. Did the trial court err in dismissing the First Amended Complaint by considering facts not alleged in the First Amended Complaint?

2. Did the trial court err by finding the First Amended Complaint made insufficient factual allegations to support a negligence claim?

3. Did the trial court err by finding the First Amended Complaint made insufficient factual allegations to support a gross negligence claim?

4. Did the trial court err by finding the First Amended Complaint made insufficient factual allegations to support a battery claim?

We affirm in part, reverse in part, and remand for further proceedings.

Background

On August 13, 2016, appellant was driving on an exit ramp leading from Interstate 95 Southbound ("I-95 South") toward Maryland Route 295 Southbound ("295 South") when she was struck from behind by a gold Acura. Prior to the crash, Officer Griffin was pursuing the gold Acura.

In her complaint, appellant alleges that the pursuit occurred without a reasonable, articulable basis, and that the collision was caused by Officer Griffin's decision to initiate pursuit for unknown reasons. The complaint went on to allege that the reason given for pursuit was a "purportedly stolen license plate." However, appellant claims that the reason was a post-facto justification because the plate "was not even discovered stolen until after Officer Griffin caused the collision."

Officer Griffin was also alleged to have violated several traffic laws first, by failing to activate his lights and sirens at the legally-required time. Additionally, appellant alleged that instead of activating his light and sirens on I-95, a multi-lane highway with ample room for cars to get out of his way, Officer Griffin waited to pursue the Acura until it entered a "narrow, one-lane exit ramp" for the sole purpose of causing a car crash before the Acura could leave his jurisdiction.

Finally, as to the cause of the accident, appellant contended that Officer Griffin's decisions to delay pursuit and to activate his lights and sirens on the narrow exit ramp

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5. Did the trial court err by dismissing Count IV, when no motion for dismissal was made or addressed to Count IV?

were "calculated to cause a collision to apprehend two minors for an alleged license plate violation before they could escape from his jurisdictional boundaries." The complaint alleged negligence, gross negligence, battery, and a violation of Md. Code (1977, 2015 Repl. Vol.), § 19-103 of the Transportation Article ("TA").

Appellees moved to dismiss the First Amended Complaint,[2] arguing that the appellant did not adequately plead the required elements of negligence or facts sufficient to meet the elements of battery. In addition, appellees contended that Officer Griffin is entitled to various forms of immunity, including public official immunity and statutory immunity, and that Officer Griffin did not act with malice or gross negligence. Finally, appellees argued that the appellant did not plead a viable claim under TA § 19-102 because the accident did not involve a road block and there was no negligence.

Specifically, in an oral opinion, the circuit court stated the following:

> I looked closely at the facts of the case, and I liken them to the facts of several other cases, including the *Boyer* [*v. State*,323 Md. 558 (1991)] decision, which is the rule of law that this Court must and shall follow.
>
> Sovereign immunity is a doctrine which prohibits suit against the State absent certain circumstances. And [*McNack v. State*, 398 Md. 378 (2007)], which really does set forth the fact that no tort - no tort, no contract can be maintained against the State. There is a doctrine that is grounded in the ability of a government official in their official capacity to be able to act. And to the extent that there are ministerial duties, there are discretionary duties. But here there's nothing in the allegations set forth in the complaint that would indicate to this Court anything near negligence, certainly not malice, and not gross negligence.

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[2] Count I: Negligence (Against all Defendants)
Count II: Gross Negligence (Against all Defendants)
Count III: Battery (Against all Defendants)
Count IV: Damages Caused by Use of Vehicles in Roadblocks (Against the State Defendants).

> Though law enforcement has to often face individuals who are not doing lawful things, and are jeopardizing the rest of us. That's often why law enforcement has to step outside of what we all would be doing is following the traffic rules in order to reach those who are not.
>
> We have to give them some discretion. That's why the law allows it. We have to give them some immunity where they act reasonably. There's nothing in the allegation set forth that would indicate to this Court that these are anything other than well-plead averments that do not give rise, that do not give rise to anything near malice or gross negligence which you need in order to sustain and get past the doctrine of sovereign immunity.
>
> Therefore, I'm going to grant the Defendant, State of Maryland, Maryland Transportation, and Officer Ivan Griffin's motion to dismiss. That's docket entry 5000. And I will cite for the purposes of this not only [Md. Code (1973, 2013 Repl. Vol.), § 5-222(b) of the Courts and Judicial Proceedings Article ("CJP"), but also Md. Code (1984, 2014 Repl. Vol.), § 12-105 of the State Government Article ("SG"),], which really sets forth the immunity sections as I've already indicated.
>
> As to all counts against the Defendants, it is – today is the 27th day of November, and it is ordered.

In dismissing the complaint, the circuit court found that the sovereign immunity doctrine prohibited suing in this case. In our review, the specific facts of this case require us to examine multiple transportation statutes as well as case law on government immunities. As we will discuss, the most pertinent statute deals with the operators of emergency vehicles while in pursuit of wrongdoers.

Standard of Review

Recently, in *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 173-74 (2015) (internal citations and quotations omitted), we set forth the proper standard for reviewing a case dismissed by the circuit court:

> A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, the allegations do not state a cause of action for which relief may be granted. The facts set forth in the complaint must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.
>
> We review the grant of a motion to dismiss *de novo*. 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.

Discussion

Statutory state-personnel immunity is established under SG § 12-105, and CJP § 5-522(b). These two provisions protect state personnel from suit and from liability for tortious conduct committed within the scope of their public duties and without malice or gross negligence.

The Maryland Tort Claims Act (the "MTCA"), *see* generally SG § 12-104(b), did away with the principle of sovereign immunity in certain circumstances, such that the State assumes liability for "intentional torts and constitutional torts as long as they were committed within the scope of state employment and without malice or gross negligence."[3] *Lee v. Cline*, 384 Md. 245, 256 (2004); *see also* SG § 12-104(b); *Tollenger*

[3] It might seem that gross negligence, the less egregious of the two standards, would be easier to describe, but over time courts have struggled to articulate a consistent definition. The best overarching statement of the principle comes from *Barbre v. Pope*,

v. State, 199 Md. App. 586, 595 (2011). If the employee is found, however, to have acted with malice or gross negligence, even though in the course of his employment, the State does not assume liability for his conduct.[4] *See Ford v. Baltimore City Sheriff's Office*, 149 Md. App. 107, 121 (2002).

A defendant is entitled to public official immunity when: (1) he is a public official; (2) the conduct that gave rise to the lawsuit occurred while he was performing discretionary rather than ministerial acts; and (3) that conduct fell within the scope of his duties. *Baltimore Police Dep't. v. Cherkes*, 140 Md. App. 282, 328 (2001); *see City of*

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402 Md. 157, 187 (2007) (cleaned up), in which the Court of Appeals adopted language from a non-MTCA setting to define gross negligence in the context of the MTCA:

> Gross negligence is an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the right of others that he acts as if such rights did not exist.

[4] As a preliminary matter, in its brief, the appellees contend that the State Defendants are also entitled to sovereign immunity because appellant failed to comply with the notice requirements of the MTCA, which is a prerequisite to the State waiving sovereign immunity. Under the MTCA, a plaintiff must notify the Treasurer of a claim before bringing an action in Court. SG § 12-106. This notice is a "condition precedent" to suit and "[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); *see Barbre*, 402 Md. at 178 ("The MTCA notice provision . . . is a condition precedent to the initiation of an action under the [Act.]") (Internal quotations omitted). Appellant's complaint and her brief before this Court fail to address sovereign immunity. Appellant has also failed to plead that the State's waiver of sovereign immunity under the MTCA has been satisfied and thus fails to state a cognizable claim against the State Defendants. On remand, the appellant may move to amend her pleading to address this deficiency.

District Heights v. Denny, 123 Md. App. 508, 516 (1998). For immunity purposes, courts have routinely held that police officers qualify as "'public officials' . . . and that when they are [acting] within the scope of their law enforcement functions they are clearly acting in a discretionary capacity." *Cherkes*, 140 Md. App. at 328-29 (quotations and citations omitted)

In her complaint, appellant states that Officer Griffin was operating an MDTA patrol vehicle within his jurisdiction, and that Officer Griffin was the authorized operator of that patrol car. It is undisputed that Officer Griffin, as a public official, was operating within the scope of his official duties when the accident occurred. Appellees argue that Officer Griffin exercised his personal judgment in deciding to pull over the Acura, alleging that he "follow[ed] the Acura" and then made the "decision to activate [his] lights and sirens." "[A]n act falls within the discretionary function of a public official if the decision which involves an exercise of his personal judgment also includes, to more than a minor degree, the manner in which the police power of the State should be utilized." *James v. Prince George's County*, 288 Md. 315, 327 (1980), *superseded by rule on other ground, Prince George's County v. Fitzhugh*, 308 Md. 384 (1987).

Immunity is often "necessary 'to permit police officers . . . to make the appropriate decisions in an atmosphere of great uncertainty. The theory is that holding police officers liable in hindsight for every injurious consequence [of their actions] would paralyze the functions of law enforcement.'" *Cherkes*, 140 Md. App. at 328 (quoting *Thacker v. City of Hyattsville*, 135 Md. App. 268, 299 (2000)).

Where the operation of an emergency vehicle is negligent, but not grossly negligent, the State is entitled to statutory immunity under TA § 19-103(b). *Boyer*, 323 Md. at 578. In *Khawaja v. Mayor & City Council, City of Rockville*, 89 Md. App. 314, 318 (1991), a police officer "made a conscious decision to go through [a] red light and enter [an] intersection at a high rate of speed" and without a siren, causing injury to the plaintiffs. *Id*. This Court determined that the officer involved was not liable because TA § 19-103 immunized acts of "simple negligence," and her actions did not rise to the level of gross negligence. *Id.* TA § 19-103 protects both Officer Griffin and the State appellees from liability if Officer Griffin was only operating an emergency vehicle in the performance of an emergency service at the time of the alleged incident. *Taylor v. Mayor and City Council of Baltimore*, 314 Md. 125, 127 (1988). As we will discuss, this does not end our inquiry because in this case there was a police pursuit.

While officers and other operators of emergency vehicles are exempt from certain rules of the road, under Maryland statutory and common law, a police officer, "in connection with his operation of a police car, owes others on the roadway a duty of due care." *Boyer*, 323 Md. at 584; TA § 21-106(d).[5] More specifically, police officers "owe a duty of care to a plaintiff injured by suspected criminals fleeing the officers if the officers set in motion a chain of events which they knew or should have known would lead to . . . [the plaintiff's] injury by the criminals or by the police effort to stop the

[5] **TA § 21-106(d)** *Driver not relieved from duty of care.* – This section does not relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons.

vehicle." *Boyer*, 323 Md. at 585 (alteration in original) (internal quotation and citations omitted). Therefore, a police officer owes a bystander a duty of due care "if he placed them within a zone of danger without reasonable justification and if he set in motion a chain of events which [he] knew or should have known would lead to" the plaintiff's injuries. *Id.* at 586 (alteration in original) (internal quotations omitted). Law enforcement officers engaging in the high speed pursuit of a driver owe a duty to innocent third parties and the breach of such duty could be the basis for State liability.

In *Boyer*, the Court stated that when analyzing a police officer's past conduct, the officer's actions should not be judged in hindsight, but according to "how a reasonably prudent police officer would respond [when] faced with the same difficult emergency situation." *Boyer*, 323 Md. at 589 (alteration added). Thus, the mere engagement in the high-speed chase of a suspect which leads to the injury of a bystander does not constitute a *prima facie* breach of an officer's duty of care to a third-party bystander. *Id.* (citing *Lee v. City of Omaha*, 209 Neb. 345, 351, 307 N.W.2d 800 (1981)). Instead, where an officer is held liable for his or her negligence, there are generally "aggravating circumstances." *Boye, 323* Md. at 590. In order to establish the negligence claim, the appellant needs to be specific in her pleading, which we state verbatim:

> [W]hen Officer Griffin began pursuing the Acura the driver was not speeding or breaking the law and posed no articulable threat of harm to others. Officer Griffin had not activated his patrol car lights or siren. The Acura legally signaled and merged into the exit lane of Exit 52 to Southbound Route 295. Route 295 was outside of Officer Griffin's jurisdiction except for a small portion immediately adjacent to Interstate 95. Once the Acura travelled 500 feet from Interstate 95, it would be outside of Officer Griffin's jurisdiction.

Officer Griffin took the same exit and continued to closely follow the Acura. The speed limit on the ramp is 50 mph or less. Officer Griffin began exceeding the speed limit at 11:04:06 p.m., just before the exit ramp, and just after the Acura moved to exit onto 295. Officer Griffin followed the Acura at speeds exceeding 80 mph, exceeding the speed limit by at least 30 mph. Officer Griffin had still not activated his lights and siren. Officer Griffin, despite the narrow one lane exit, continued to pursue the Acura at

speeds over 80 mph, in violation of TA §§ 21-801,[6] 21-801.1.[7] and 21-901.[8] Officer Griffin, in violation of TA § 21-106(c), failed to activate his lights

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[6] **TA § 21-801. Basic rule.**

(a) *Reasonable and prudent speed required.* – A person may not drive a vehicle on a highway at a speed that, with regard to the actual and potential dangers existing, is more than that which is reasonable and prudent under the condition.

(b) *Driver to control speed.* – At all times, the driver of a vehicle on a highway shall control the speed of the vehicle as necessary to avoid colliding with any person or any vehicle or other conveyance that, in compliance with legal requirements and the duty of all persons to use due care, is on or entering the highway.

(c) *Drivers to reduce speed in certain circumstances.* – Consistent with the requirements of this section, the driver of a vehicle shall drive at an appropriate reduced speed when approaching and crossing an intersection at which cross traffic is not required to stop by a traffic control device.

(d) *Approaching and crossing railroad grade crossings.* – Consistent with the requirements of this section the driver of a vehicle shall drive at an appropriate, reduced speed when approaching and crossing a railroad grade crossing.

(e) *Approaching and going around curves.* – Consistent with the requirements of this section, the driver of a vehicle shall drive at an appropriate, reduced speed when approaching and going around a curve.

(f) *Approaching crests of grades.* – Consistent with the requirements of this section, the driver of a vehicle shall drive at an appropriate, reduced speed when approaching the crest of a grade.

(g) *Traveling on narrow or winding roadways.* – Consistent with the requirements of this section, the driver of a vehicle shall drive at an appropriate, reduced speed when traveling on any narrow or winding roadway.

(h) *Special danger as to pedestrians or other traffic.* – Consistent with the requirements of this section, the driver of a vehicle shall drive at an appropriate, reduced speed when any special danger exists as to pedestrians or other traffic or because of weather or highway conditions.

[7] **TA § 21-801.1. Maximum limits.**

(a) *General rule.* – Unless there is a special danger that requires a lower speed to comply with § 21-801 of this subtitle the limits specified in this section or otherwise established under this subtitle are maximum lawful speeds. A person may not drive a vehicle on a highway at a speed that exceed these limits.

(b) *Specified limits.* – Except as otherwise provided in this section, the maximum speed limits are:
(1) 15 miles an hour in alleys in Baltimore County;
(2) 30 miles an hour on:
(i) All highways in a business district; and
(ii) Undivided highways in a residential district;
(3) 35 miles an hour on divided highways in a residential district;
(4) 50 miles an hour on undivided highways in other locations; and
(5) 55 miles an hour on divided highways in other locations.

(c) *Continuation of certain prior limits.* – Except as provided in subsection (e) of this section, a posted maximum speed limit lawfully in effect on December 31, 1974, is a maximum lawful speed even if it differs from a limit specified in subsection (b) of this section.

(d) *Alteration of limits.* – Except as provided in subsection (e) of this section, a maximum speed limit specified in (b) of this section or in effect under subsection (c) of this section may be altered as provided in this subtitle.

(e) *Limits may not exceed 55 or 65 miles an hour.* – (1) Notwithstanding any other provision of this subtitle, a maximum speed limit of more than 55 miles an hour may not be established or continued on any highway in this State that:
(i) Is not an interstate highway or an expressway; or
(ii) Would subject the State to federal funding sanctions under 23 United States Code § 154.
(2) Subject to the provisions of paragraph (1) of this subsection, a maximum speed limit of more than 65 miles an hour may not be established on any highway in the State
(f) *St. Mary's County.* – (1) Unless otherwise posted on a public road in a residential subdivision, in residential subdivision in St. Mary's County, a posted speed limit on a main access road applies to all public roads in the

and siren before violating traffic laws. Officer Griffin's failure to activate his lights and siren before violating traffic laws was either in violation of departmental policy or pursuant to an unreasonable and illegal departmental policy.

At this time, appellant was driving on the same exit ramp, unaware of the chase unfolding behind her. Officer Griffin sounded his bullhorn causing the Acura to pass other vehicles in an unsafe manner. When the Acura used the shoulder to pass another car on the right, Officer Griffin finally activated his lights and sirens at 11:04:26 p.m., even though he had been pursuing the Acura for some time.

Officer Griffin's pursuit, without lights and sirens, and his decision to activate those light and sirens only after causing a materially more dangerous situation, was without due regard for the safety of other persons. Officer Griffin's decisions initiated a dangerous pursuit and to activate his lights and sirens were motivated by a desire to cause the Acura to crash before it left his jurisdiction.

Officer Griffin's failure to activate his lights and sirens, while chasing the Acura in a one-lane, limited access exit-ramp, was without "due regard for the safety of all persons." TA § 21-106(d).

That, after chasing the Acura for quite some time, Officer Griffin finally suggested to a dispatcher that the Acura's license plates might be stolen. The chase was for the purpose of causing the Acura to crash so that Officer Griffin could apprehend the Acura's driver. Officer Griffin's tactic for apprehending the occupants of the Acura, causing the Acura to crash, was in wanton disregard for the safety of others and motivated by his effort

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residential subdivision, even if the posted speed limit on the main access road is less than 30 miles per hour.
(2) The provision of paragraph (1) of this subsection do not apply when a through road traverses a residential subdivision. The maximum speed limit applicable to the subdivision shall be posted on each road exiting off the through road and into the subdivision, along with the posting on the main access road.
(3) A maximum speed limit established under this subsection in a residential subdivision shall be based on the subdivision's road design, motor vehicle traffic, and pedestrian safety.

[8] **TA § 21-901. Scope of subtitle.** The provisions of this subtitle apply throughout this State, whether on or off a highway.

> to prevent the Acura from leaving his jurisdiction, instead of based on the safety of the motorists on the roadway. By failing to activate his lights and sirens until after violating several laws, Officer Griffin rendered his already unreasonably dangerous and grossly negligent chase even more dangerous to the point of wanton disregard for those on the exit ramp.
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> Appellant was part of a limited class of people to whom Officer Griffin owed a duty, those motorists on the narrow ramp when Officer Griffin initiated and continued his reckless pursuit for the purpose of causing a car crash. Appellant was in the path of the danger when Officer Griffin determined to initiate (and continue) the pursuit, rendering her an eminently forseeable victim of the reckless chase.
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> As a direct result of Officer Griffin's decision to chase the Acura in wanton disregard for the safety of others, for the purpose of causing it to crash before it left his jurisdictional limits, the Acura struck appellant's car with enough force to spin the Acura backwards and push appellant's vehicle seven hundred feet down the exit ramp after smashing it into the concrete barrier on the side of the ramp.
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> Officer Griffin's decision to activate his lights and sirens, once he was on a single-lane exit ramp and after he had already been pursuing the Acura at speeds over 80 mph, was in wanton and reckless disregard for other's safety.

Appellant alleges that she adequately plead the four elements of negligence in order to state a viable negligence claim. The elements are: (1) the existence of a duty owed by defendant to the plaintiff; (2) a breach of that duty; (3) a causal relationship between the breach and harm to the plaintiffs suffered; and (4) damages. *Cramer v. Hous. Opportunities Comm'n of Montgomery Cty.*, 304 Md. 705, 712 (1985).

Appellees respond that appellant did not adequately plead the required elements of negligence, as she was required to allege facts, with some degree of specificity, to demonstrate elements which are required to sustain the cause of action. *Valentine v. On*

Target, Inc., 353 Md. 544, 549 (1999). That "it is not sufficient to merely assert conclusory allegations suggesting that the elements are in fact present in the controversy." *Id.*

The appellee contends that to show that the officer owed a duty to protect appellant, the appellant was required to plead facts showing the existence of a legally cognizable duty. *Rosenblatt v. Exxon*, 335 Md. 58, 76 (1994); *Erie Ins. Co. v. Chops*, 322 Md. 79, 84 (1991). Whether such a duty exists "is a matter of law to be determined by the court and, therefore, is an appropriate issue to be disposed of on motion for dismissal." *Bobo v. State*, 346 Md. 706, 716 (1997).

Appellees argue further that the allegation in the complaint that Officer Griffin intended the Acura to crash before the car left his jurisdiction was speculative and unsupported by the facts. That the facts presented were that Officer Griffin was driving a MDTA police patrol vehicle on I-95 South near Exit 52 when he began following an Acura. As he followed the Acura onto 295 South, the Acura passed another vehicle in an unsafe manner. When the driver illegally used the shoulder to pass another car on the right, Officer Griffin attempted to conduct a traffic stop. As soon as Officer Griffin turned on his lights and siren, the Acura accelerated in an apparent attempt to elude the police until the Acura came to a stop, as it rear-ended the car appellant was driving. In fact, at the hearing on this motion, counsel for appellant acknowledged that Officer Griffin's car never hit the appellant's car or the Acura.

Appellees further contend that the leading case in Maryland addressing the duty owed by a police officer to the public states clearly that "a police officer owes no duty to

individual members of the community simply by virtue of the fact that he is a police officer." *McNack*, 398 Md. at 396-98. Instead, as officers, the police owe a "duty to protect the public" which "in and of itself does not create a special relationship with an individual[.]" *Id.* at 398 (*quoting Ashburn v. Anne Arundel Cty.*, 306 Md. 617, 628 (1986)).

Further, that negligence is not actual unless it is the proximate cause of the plaintiff's injury. *McNack*, 398 Md. at 394 (quotations omitted). Appellees aver that rather than setting forth allegations supporting the inferences that the appellees were the proximate cause of the accident, the complaint instead sets forth facts plainly demonstrating that any liability for the accident firmly rests with the driver of the Acura.

In addition, appellees contend that the only permissible inference from the complaint is that the Acura, driving erratically and using the shoulder to pass cars on the right side, was the sole cause of the accident, and that the Acura was already attempting to pass appellant from the shoulder before Officer Griffin turned on his emergency equipment.

Finally, appellees aver that the accident was caused solely by the Acura's decision to break the law and flee when Officer Griffin tried to pull it over, and that Officer Griffin was entitled to assume that the Acura would obey his traffic signals, slow down, and pull over. *See* TA § 21-405 (requiring that on the approach of an emergency vehicle using lights and a siren, other drivers "shall stop" and "shall yield the right-of-way"). Appellees note that the circuit court and appellant's counsel appeared to agree that it was reasonable for Officer Griffin to assume that the Acura would pull over and stop the

vehicle. At the motion to dismiss, the circuit court asked appellees' counsel, "at what point is [the Acura] required to pull over?," to which counsel responded, "[i]mmediately."

We disagree with appellees. The facts set forth in the complaint, as stated above, were "pleaded with sufficient specificity to state a cause of action for negligence." *RRC Northeast*, 413 Md. at 644 (citations omitted). The alleged police action taken in pursuit of the Acura on a one-lane exit ramp with speeds of 80 mph would place the appellant "within a zone of danger without reasonable justification" and possibly "set in motion a chain of events which [Officer Griffin] knew, or should have known, would lead to [the appellant's injuries]." *Boyer*, 323 Md. at 586 (quotations omitted); TA § 21-106(d). The speed of the Acura and Officer Griffin's vehicle, as alleged in the complaint, would have the vehicles cover a quarter of a mile in 20 seconds on a one-lane exit ramp. Such a rapidly approaching vehicle would have given appellant little room to maneuver for her own safety and avoid the zone of danger.

Further, in making their argument that appellant failed to adequately plead the required elements of negligence, appellees failed to address *Boyer's* discussion of negligence as to a police pursuit, much less distinguish it. Rather, appellees only reference *Boyer* in discussing the absence of gross negligence on the part of the police officer. The cases cited by the appellees are of limited utility in deciding whether the circuit court erred as they do not involve a police pursuit as referenced in TA § 21-106(d). As to sovereign immunity, in *Boyer*, the Court reiterated its holding in *James v. Prince George's County*, where we held that "the government, when it has waived

immunity . . . , is liable for torts committed by its officers even though those officers themselves are not liable because of public official immunity." *Boyer*, 323 Md. at 582 (quoting *James*, 288 Md. at 333); *see also Surratt v. Prince George's Cty.*, 320 Md. 439, 443 (1990); *Prince George's Cty. v. Fitzhugh*, 308 Md. 384, 388 (1987).

Roadblock

"A police officer may not direct any driver, owner, or passenger of a motor vehicle, other than a police vehicle, to participate in a roadblock." TA § 19-102(a). TA § 19-102(b)[9] provides:

> [i]f any police officer of this state . . . , while otherwise acting within the scope of his authority in enforcing any law, directs the driver, owner, or passenger of a motor vehicle other than a police vehicle to participate in a roadblock to assist him in enforcing that law or in apprehending any person suspected of violating or known to have violated that law, this State . . . is liable for the damages or injuries proximately caused by participation in the roadblock."

The statute "is remedial in nature and therefore is to be liberally construed." *Keesling v. State*, 288 Md. 579, 589 (1980) (citing *State v. Barnes*, 273 Md. 195, 208 (1974)).

Appellees failed to address the claim of "Damages caused by the use of the vehicle in Roadblocks, and the court did not specifically reference it as well, either."[10] We will address this issue, as the circuit court dismissed this count, along with the rest of the complaint.

[9] This is a predecessor statute.

[10] Count IV: Damages caused by the use of vehicles in Roadblocks.

In her complaint, appellant alleged that Officer Griffin activated his lights and sirens and thus ordered appellant, pursuant to TA § 21-405(b),[11] to "drive immediately to a position parallel to and as close as possible to the edge or curb of the roadway[.]" Appellant alleged that Officer Griffin intended to cause the Acura to crash to apprehend its occupants, and that he waited until the Acura was on the shoulder before ordering appellant to "drive immediately to a position parallel to and as close as possible to the edge or curb of the roadway, *i.e.*, the shoulder."

In *Charles Cty. Comm'rs v. Johnson*, 393 Md. 248, 267 (2006), the Court of Appeals held that where "the objectively-viewed appearance of the police officer['s] conduct amounted to a direction or order for [the victim] to participate in the apprehension of [the suspect] and/or in a roadblock," TA § 19-102 applied. In *Johnson*, the vehicles were stationary, and therefore, the question was whether they were to remain as obstacles, *i.e.*, roadblocks. *Id.* at 255. The pleadings in this case were not sufficient to state a claim as to whether the objectively viewed appearance of the police officer's conduct amounted to a directive or order to comply with TA § 21-405(b) by merely pulling over to the edge or curb of the roadway. As pled, both the Acura and the vehicle driven by the appellant were on the move, and it would be mere speculation as to when

[11] **TA § 21-405(b)** *Duty of driver upon approach of emergency vehicle.* – On the immediate approach of an emergency vehicle using audible and visual signals that meet the requirements of § 22-218 of this article or of a police vehicle lawfully using an audible signal, the driver of every other vehicle, unless otherwise directed by a police officer, shall drive immediately to a position parallel to and as close as possible to the edge or curb of the roadway, clear of any intersection.

either vehicle would stop in relation to each other to cause a roadblock. The circuit court did not err in dismissing this count.

Battery

Appellant's complaint did not make a claim for battery. A battery is an "unpermitted application of trauma (touching) by one person upon any part of the body of another." *Saba v. Darling*, 72 Md. App. 487, 491 (1987). The touching must be intentional, as "a purely accidental touching or one caused by mere inadvertence, is not enough to establish the intent requirement[s] for battery." *Nelson v. Carrol*, 355 Md. 593, 602 (1999).

In her complaint, appellant alleged that Officer Griffin generally intended to unlawfully invade her physical well-being through offensive contact by forcing the Acura to crash into her, and that "Officer Griffin's pursuit of the Acura was founded in his intent to cause the Acura to strike the appellant's or someone else's vehicle."

Appellees contend that Officer Griffin would not need to cause an accident to prevent the suspect from leaving the jurisdiction, because "[t]he common law doctrine of fresh pursuit allows a police officer to pursue and arrest a person outside of the officer's geographic jurisdiction, without a warrant, for misdemeanors committed in his presence *within a reasonable time* thereafter." *Glover v. State*, 88 Md. App. 393-400-01 (1991); *see also* Md. Code (2001, 2008 Repl. Vol.), § 2-301(c)-(d) of the Criminal Procedure Article ("CP"). The allegation that such action was intended by Officer Griffin is untenable and not based on any facts alleged.

In *Ghassemieh v. Schafer*, 52 Md. App. 32, 40-41 (1982), we stated "while it is true that . . . the absence of intent is essential to the legal conception of negligence, the presence of an intent to do an act does not preclude negligence. The concepts of negligence and battery are not mutually exclusive." *Id.* (quoting *Adams v. Carey*, 172 Md. 173, 186 (1937)); *see* Edgerton, *Negligence, Inadvertence and Indifference; the Relation of Mental States to Negligence*, 39 Harv.L.Rev. 849 (1926).

In *Ghassemieh*, 52 Md. App. at 41, this Court found Professor Prosser's explanation "of the distinction between intended and unintended acts" helpful:

> In negligence, the actor does not desire to bring about the consequences which follow, nor does he know that they are substantially certain to occur, or believe that they will. There is merely a risk of such consequences, sufficiently great to lead a reasonable man in his position to anticipate them, and to guard against them. *If an automobile driver runs down a man in the street before him, with the desire to hit him, or with the belief that he is certain to do so, it is an intentional battery; but if he has no such desire or belief, but merely acts unreasonably in failing to guard against a risk which he should appreciate, it is negligence.* As the probability of injury to another, apparent from the facts within his knowledge, becomes greater, his conduct takes on more of the attributes of intent, until it reaches that substantial certainty of harm which juries, and sometimes courts, may find inseparable from intent itself. Such intermediate mental states, based upon a recognizable great probability of harm, may still properly be classed as 'negligence,' but are commonly called 'reckless,' 'wanton,' or even 'willful.' They are dealt with, in many respects, as if the harm were intended, so that they become in effect a hybrid between intent and negligence, occupying a sort of penumbra between the two.

Id. (Quotations omitted) (citing Prosser, *Law of Torts*, § 31 at 145 (4th ed. 1971)) (emphasis added).

As to this issue, we hold that on the truth of the facts and allegations in the pleadings, as well as all inferences that may be drawn from them, the pleadings are

insufficient and do not state a cause of action for battery. There is nothing in the complaint that would establish that the action of the police officer was anything other than unreasonable and therefore possibly negligent.

Failure to Stop to Render Assistance

Appellant also alleges that Officer Griffin's conduct violated TA § 20-104(a), which provides that "the driver of each vehicle involved in an accident that results in bodily injury to or death of any person and damage to any intended vehicle or other intended property shall render reasonable assistance to any person injured." Appellant alleges that instead of assisting her, the MDTA spent all its resources pursuing a juvenile over a purported stolen license, and that it was more than 35 minutes after the collision when a police vehicle first approached appellant's vehicle. A fair reading of the complaint reveals that the complaint alleges a violation of TA § 20-104 only as to the issue of duty of care and not as a separate cause of action. As discussed above, the duty of care in this case arises out of TA § 19-106(b).[12]

Malice or Gross Negligence

Under certain circumstances, the various forms of immunity to which Officer Griffin is entitled can be defeated by a showing of malice or gross negligence. CJP § 5-522(a)(4) (requiring malice or gross negligence to defeat statutory state-employee immunity); CJP § 5-639(b)(2) (providing that TA immunity is unavailable for malicious

[12] Regardless, the "mere violation of a statute will not support action in damages, even though it may be evidence . . . unless there is legally sufficient evidence to show that the violation was the proximate cause of the injury." *Pamela J. McQuay v. Schertle*, 126 Md. App. 556, 579 (1999) (citations omitted).

or grossly negligent conduct); *see Thacker v. City of Hyattsville*, 135 Md. App. 268, 300 (2000) (holding that once it is shown that an individual is a public official acting in a "discretionary [capacity]," the only way to defeat public official immunity is to demonstrate that the public official acted with "actual malice").

In order "[t]o [overcome] a motion raising governmental immunity, the plaintiff must allege with some *clarity and precision* those facts which make the act malicious." *Cherkes*, 140 Md. App. at 330 (emphasis added) (citations omitted) (quoting *Penhollow v. Board of Comm'rs*, 116 Md. App. 265, 294 (1997)). Malice is conduct "characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud[.]" *Barbre*, 402 Md. at 182 (citing *Lee v. Cline*, 384 Md. 245, 268 (2004)); *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 131 n.16 (2000)).

"[G]ross negligence is an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is guilty of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist." *Barbre*, 402 Md. at 187 (citing *Liscombe v. Potomac Edison Co.*, 303 Md. 619, 635 (1985); *Romanesk v. Rose*, 248 Md. 420, 423 (1968)).

We agree with appellees that appellant's complaint falls short of this requirement. The complaint does not contain allegations that Officer Griffin acted with wanton disregard, nor that his actions were unreasonably dangerous and grossly negligent. Even

an *inference* of malice-which would still fall short of the "clarity and precision" required, *Thacker*, 135 Md. App. at 330-would depend on appellant's bald accusation that Officer Griffin's "activat[ion of] his lights and sirens were motivated by a desire to cause the Acura to crash before it left his jurisdiction." Such conjecture about Officer Griffin's motivation is neither a reasonable inference from the facts nor a sufficient allegation to defeat a motion to dismiss. *See, e.g.*, *Cherkes*, 140 Md. App. at 330 ("The mere existence of an issue as to intent, motive, or state of mind is insufficient, however, to defeat a motion to dismiss.") (citing *Thacker*, 135 Md. App. at 302-03).

There is nothing in Officer Griffin's actions suggesting an "evil or wrongful motive," *Barbre*, 402 Md. at 182, and there are no facts that support the inference that Officer Griffin deliberately intended wrongdoing or ill will.

Appellant's complaint is similar to those in other cases where this Court determined that a police officer was not grossly negligent. For example, in *Boyer*, the plaintiff asserted that in pursuit of the suspect vehicle, a trooper sped through a heavy traffic area, failed to activate emergency equipment, and failed to adhere to acceptable police procedures and policies in an attempt to apprehend a suspect. 323 Md. at 579-80. Nevertheless, this Court held that the plaintiffs' allegations that the trooper drove at high speeds, on a road congested with traffic, in an attempt to apprehend a suspected intoxicated driver did not indicate that the trooper acted with wanton or reckless disregard for the safety of others. *Id.* at 580. An allegation of an improper motive without more is insufficient. Here, as in *Boyer*, there were allegations of excessive speeds, congested roads, failure to activate emergency lights, and reckless pursuits.

In order for the conduct of Officer Griffin to reach the level of wanton or reckless disregard it must "take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent." *Medina v. Meilhammer*, 62 Md. App. 239, 250 (1985) (footnotes omitted) (internal quotations omitted) (citing W. Page Keeton, et al., *Prosser & Keeton on the Law of Torts*, § 834, 212-14 (5th ed. 1984)). Officer Griffin's conduct, as alleged in appellant's pleadings, was not in wanton or reckless disregard for the safety of others.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AS TO COUNT I AND AFFIRMED AS TO COUNTS II, III, AND IV AND CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 75% BY APPELLEE AND 25% BY APPELLANT.