APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 21-6423

KEVIN YOUNGER,

Plaintiff – Appellee,

v.

NEIL DUPREE,

Defendant – Appellant,

and

JEMIAH L. GREEN; RICHARD N. HANNA; KWASI H. RAMSEY; WALLACE SINGLETARY; TYRONE CROWDER,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, Senior District Judge. (1:16-cv-03269-RDB)

Argued: January 25, 2022 Decided: March 11, 2022

Before KING and RUSHING, Circuit Judges, and David J. NOVAK, United States District Judge for the Eastern District of Virginia, sitting by designation.

Dismissed by unpublished opinion. Judge King wrote the opinion, in which Judge Rushing and Judge Novak joined.

ARGUED: Karl Aram Pothier, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellant. Allen Eisner Honick, FURMAN | HONICK LAW, Owings Mills, Maryland, for Appellee. ON BRIEF: Brian E. Frosh, Attorney General, Shelly E. Mintz, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellant. David Daneman, WHITEFORD, TAYLOR & PRESTON, LLP, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

KING, Circuit Judge:

In this 42 U.S.C. § 1983 action, a jury in the District of Maryland found defendant Neil Dupree liable for violating plaintiff Kevin Younger's Fourteenth Amendment due process rights. Dupree pursues a single issue on appeal: that the district court erred in rejecting his contention that Younger's lawsuit is barred because he failed to exhaust his available administrative remedies, as required by the Prison Litigation Reform Act (the "PLRA"). As explained below, because Dupree raised his exhaustion contention in a pretrial motion for summary judgment — and did not reassert that contention in a post-trial motion — our review thereof is precluded by

controlling precedent. We therefore dismiss Dupree's appeal.

I.

The dispute giving rise to this litigation stems from an assault that occurred on September 30, 2013, at the Maryland Reception, Diagnostic & Classification Center, a state prison in Baltimore, where Younger was a pretrial detainee. That morning, three prison guards attacked Younger and other inmates at the direction of Dupree, who served as an intelligence lieutenant at the prison. Younger was asleep when the guards entered his cell. The assailants promptly grabbed Younger and threw him from his bunk to the concrete floor. They assaulted Younger by slamming his head against a toilet and striking his face, head, and body multiple times using handcuffs and other objects. Having beaten Younger severely, the guards left him on the floor of his cell, unconscious and bleeding profusely. Younger did not receive appropriate and timely medical attention. Several months after the incident, Younger was flown to a hospital for treatment of the injuries he sustained to his head and leg. The prison guards who executed the attack on Younger and the other inmates were criminally convicted for their actions, and the prison's warden was forced to resign.

On September 28, 2016, Younger initiated this 42 U.S.C. § 1983 action against Dupree and several other prison employees, including the warden and the three prison guards who assaulted him. By his Complaint, Younger alleged, inter alia, violations of the Eighth and Fourteenth Amendments to the Constitution. On July 30, 2019, Younger filed his operative Amended Complaint, again pursuing § 1983 claims under the Eighth and Fourteenth Amendments. In his claims, Younger

contended that Dupree and his codefendants had used excessive force against him during the 2013 assault, in contravention of Younger's Fourteenth Amendment due process rights.

On November 18, 2019, Dupree moved for summary judgment, maintaining, in relevant part, that Younger's claims are barred because he failed to exhaust his available administrative remedies — as required by the PLRA — before initiating his § 1983 action. *See* 42 U.S.C. § 1997e(a). Shortly thereafter, on December 19, 2019, the district court rejected Dupree's exhaustion contention and denied his summary judgment motion. *See Younger v. Green*, No. 1:16-cv-03269 (D. Md. Dec. 19, 2019), ECF No. 217 (the "Denial Opinion"). As the Denial Opinion explained, the PLRA does not bar Younger's claims because the administrative remedy identified by Dupree was "not truly available in any meaningful sense and Younger was not required to pursue it." *See* Denial Opinion 14 (internal quotation marks omitted).

The litigation thereafter proceeded to the 10-day jury trial. On February 4, 2020, the jury returned its verdict in favor of Younger, finding Dupree and four of his codefendants liable under § 1983 for violating the Fourteenth Amendment's due process protections.[1] The

[1] Younger erroneously asserts in his appellate brief that the jury found Dupree and four of his codefendants liable for violating the Eighth Amendment. *See* Br. of Appellee 1, 2, 12, 14. According to the verdict, however, only Younger's Fourteenth Amendment rights were violated. *See Younger v. Green*, No. 1:16-cv-03269 (D. Md. Feb. 4, 2020), ECF No. 265. That is so because, unlike excessive force claims pursued by convicted prisoners — which are governed by the Cruel and Unusual Punishment Clause of the Eighth Amendment — excessive force claims pursued by pretrial detainees like Younger are governed by the Due Process Clause of the Fourteenth Amendment. *See Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015).

jury awarded Younger the sum of $700,000 in damages, and the district court entered its judgment in Younger's favor that same day.

Dupree thereafter filed a post-trial motion seeking a remittitur with respect to the verdict, and the district court denied that motion. Importantly, Dupree did not therein reassert his PLRA exhaustion contention that had been rejected by the Denial Opinion. That fact notwithstanding, Dupree seeks appellate review of the court's pretrial rejection of his exhaustion contention. We possess jurisdiction pursuant to 28 U.S.C. § 1291.

II.

Under controlling precedent of this Court, we "will not review, under any standard, the pretrial denial of a motion for summary judgment after a full trial and final judgment on the merits," when the issue rejected pretrial has not been pursued in the district court by way of a post-trial motion. *See Chesapeake Paper Prod. Co. v. Stone & Webster Eng'g Corp.*, 51 F.3d 1229, 1237 (4th Cir. 1995). We have since made clear that the rule specified in *Chesapeake* applies to appellate review of not only factual issues, but also purely legal ones. *See Varghese v. Honeywell Int'l*, 424 F.3d 411, 423 (4th Cir. 2005).

The circumstances of this appeal fall precisely within the scope of our *Chesapeake-Varghese* precedent. By his unsuccessful pretrial motion for summary judgment, Dupree maintained that Younger's § 1983 claims are barred because he failed to exhaust his administrative remedies. In its Denial Opinion, the district court carefully considered and rejected that contention. And after losing the 2020 jury trial by way of the adverse damages verdict, Dupree failed to reassert and preserve his exhaustion argument in a post-trial motion.

Notably, Dupree concedes on appeal that our 1995 *Chesapeake* decision will "ordinarily" preclude appellate review of a pretrial denial of a summary judgment motion where, "as here, the issue has not been presented to the district court through a post-trial motion." *See* Br. of Appellant 2. He also acknowledges that, in our 2005 *Varghese* decision, we recognized that the *Chesapeake* precedent applies to and precludes appellate review of a "purely legal defense denied on summary judgment but not raised in a post-trial motion." *Id.* Nevertheless, Dupree requests this panel to "revisit" our circuit precedent and consider "the suggestion by the dissent in *Varghese* that *Chesapeake* does not and should not preclude appellate review of purely legal defenses extinguished on summary judgment." *See* Reply Br. of Appellant 3.[2]

As Dupree correctly acknowledges, the *Varghese* decision makes it crystal clear that, when an issue resolved on summary judgment — even a purely legal one — is not presented to the district court in a post-trial motion, we will not review on appeal the pretrial denial of summary judgment after a full trial has been conducted and final judgment entered. *See* 424 F.3d at 423. In support of his assertion that we should nevertheless review his PLRA exhaustion contention, Dupree relies almost exclusively on a dissenting opinion filed in *Varghese*. *Id.* at 423-27 (Motz, J., concurring in part and dissenting in part). That dissent would have authorized

[2] During oral argument, Dupree's lawyer conceded that the *Varghese* decision is "controlling." But when asked if he wished to pursue an en banc rehearing in this appeal to revisit our precedent, he responded in the negative. He then sought to distinguish *Varghese* based on the difference between the legal issue presented therein (preemption) and the legal issue pursued here (exhaustion). Put succinctly, Dupree's effort to distinguish *Varghese* is unpersuasive.

appellate review of certain purely legal issues — such as legal defenses — if those issues were resolved pretrial and not later pursued in a post-trial motion. *Id.* at 426. Significantly, the dissent distinguished those circumstances from the situation in *Chesapeake*, where the summary judgment motion had presented factual issues and the court had decided that the case should go to trial. *Id.* at 425. The dissent observed that "the evidentiary concerns discussed in *Chesapeake* are simply not at issue when a party seeks to reassert on appeal a legal defense that the court below rejected at the summary judgment stage." *Id.* (emphasis omitted).

Relying on the *Varghese* dissent, Dupree argues here that, after his exhaustion contention — a legal defense — had been fully and finally resolved by the Denial Opinion, "nothing could have occurred at the merits trial to change that disposition." *See* Reply Br. of Appellant 3. Dupree also laments that our *Chesapeake*-*Varghese* precedent is unfair in this context because it "perpetuates the extinction of [his] potentially meritorious legal defense to [Younger's] claims simply because [Dupree] — after the merits trial and without any new facts in hand — did not ask the district court to revisit its earlier, purely legal, decision." *Id.* at 4.

Although we appreciate Dupree's appellate contention, his argument simply tracks the views expressed in the *Varghese* dissent and is not supported by our circuit precedent. We recognize that there is a circuit split concerning appellate review of a purely legal issue in circumstances such as these. And we acknowledge that our precedent on this issue adheres to the minority view.[3]

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[3] Based on our review of precedent from the other courts of appeals, the Second, Third, Sixth, Seventh, Ninth, Tenth, D.C., and Federal

But as we have explained time and again, a three-judge panel of this Court is not entitled to circumscribe or undermine an earlier panel decision. *See McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004) (en banc); *see also United States v. Williams*, 808 F.3d 253, 261 (4th Cir. 2015); *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021). We must therefore adhere to our *Chesapeake-Varghese* precedent, which can only be altered by this Court sitting en banc or by the Supreme Court. Pursuant to that precedent, we "will not review, under any standard, the pretrial denial of a motion for summary judgment after a full trial and final judgment on the merits," even in circumstances where the issue rejected on summary judgment and not reasserted in a post-trial motion is a purely legal one. *See Varghese*, 424 F.3d at 421, 423 (quoting *Chesapeake*, 51 F.3d at 1237). Because the circumstances of this appeal fall precisely within the confines of our *Chesapeake-Varghese* precedent, the exhaustion issue raised by Dupree is not properly before us and our review thereof is precluded.

Circuits appear to allow appellate review of legal issues that were resolved pretrial and not presented to the district court again in a post-trial motion. *See Rothstein v. Carriere*, 373 F.3d 275, 284 (2d Cir. 2004); *Pennbarr Corp. v. Ins. Co. of N. Am.*, 976 F.2d 145, 146, 149-55 (3d Cir. 1992); *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir. 1997); *Chemetall GMBH v. ZR Energy, Inc.*, 320 F.3d 714, 719-20 (7th Cir. 2003); *Pavon v. Swift Transp. Co.*, 192 F.3d 902, 906 (9th Cir. 1999); *Ruyle v. Cont'l Oil Co.*, 44 F.3d 837, 841-42 (10th Cir. 1994); *Feld v. Feld*, 688 F.3d 779, 783 (D.C. Cir. 2012); *United Techs. Corp. v. Chromalloy Gas Turbine Corp.*, 189 F.3d 1338, 1344 (Fed. Cir. 1999). The First and Fifth Circuits, on the other hand, do not permit appellate review in such circumstances. *See Ji v. Bose Corp.*, 626 F.3d 116, 127-28 (1st Cir. 2010); *Feld Motor Sports, Inc. v. Traxxas, L.P.*, 861 F.3d 591, 596 (5th Cir. 2017).

III.

Pursuant to the foregoing, we adhere to our *Chesapeake-Varghese* precedent and dismiss this appeal.

DISMISSED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER,	*	
Plaintiff,	*	
v.	*	Civil Action No. RDB-16-3269
JEMIAH L. GREEN, *et al.*,	*	
Defendants.	*	

* * * * * * * * *

MEMORANDUM OPINION

Plaintiff Kevin Younger ("Plaintiff" or "Younger"), brought this action against Sergeant Jemiah Green ("Green"), Sergeant Kwasi Ramsey ("Ramsey"), and Correctional Officer Richard Hanna ("Hanna") of the Maryland Department of Public Safety & Correctional Services ("DPSCS"), alleging that Green, Ramsey, and Hanna assaulted him while he was incarcerated in the Maryland Reception, Diagnostic & Classification Center ("MRDCC"). In addition to Green, Ramsey, and Hanna, Younger also sued three supervisory employees: former MRDCC Warden Tyrone Crowder ("Crowder"), Major Wallace Singletary ("Singletary"), and Lieutenant Neil Dupree ("Dupree").

This case proceeded to a jury trial on January 21, 2020 against Defendants Green, Ramsey, Hanna, Crowder, Singletary, and Dupree. On January 29, 2020, this Court granted Defendant Singletary's Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(a), entering judgment in favor of

Singletary. (ECF No. 245.) On February 3, 2020, the jury returned a verdict in favor of Plaintiff against Defendants Crowder, Dupree, Green, Hanna, and Ramsey in the amount of $700,000.00. (ECF Nos. 265, 266.)

Currently pending before this Court are several post-trial motions: Defendant Crowder's Rule 50(b) Motion for Judgment or, in the Alternative, for Remittitur (ECF No. 279); *Pro se* Defendant Ramsey's Motion to Stay Enforcement of Judgement (ECF No. 280); Defendant Dupree's Motion for Remittitur (ECF No. 282); and *Pro se* Defendant Ramsey's Motion for Preparation of District Court's Transcripts at Government Expense (ECF No. 293). The Court has reviewed the parties' submissions and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the reasons that follow, Defendant Crowder's Rule 50(b) Motion for Judgment or, in the Alternative, for Remittitur (ECF No. 279) is DENIED; *Pro se* Defendant Ramsey's Motion to Stay Enforcement of Judgement (ECF No. 280) is GRANTED as unopposed; Defendant Dupree's Motion for Remittitur (ECF No. 282) is DENIED; and *Pro se* Defendant Ramsey's Motion for Preparation of District Court's Transcripts at Government Expense (ECF No. 293) is DENIED AS MOOT.

BACKGROUND

In considering a motion under Rule 50, the court views the evidence in the light most favorable to the non-movant. *Gregg* v. *Ham*, 678 F.3d 333, 341 (4th Cir. 2012). The background of this case has been discussed at length in this Court's November 19, 2019 Memorandum Opinion denying Defendants Crowder, Singletary, and Dupree's Motions to Dismiss (ECF No. 188) and in this Court's December 19, 2019 Memorandum Opinion addressing

Defendants Crowder, Singletary, and Dupree's summary judgment motions (ECF No. 217).

In brief, Plaintiff's suit arises from a brutal assault on Plaintiff by Defendants Sergeant Green, Sergeant Ramsey, and Correctional Officer Hanna while Plaintiff was incarcerated in the Maryland Reception, Diagnostic & Classification Center ("MRDCC"). On the morning of September 30, 2013, Green, Ramsey, and Hanna attacked Younger as he slept in his cell, brandishing a mace can, radios, and handcuffs used as brass knuckles. (Jan. 28, 2020 Trial Tr. at 41, ECF No. 296.) Younger's head was slammed against the concrete floor and against the toilet in his cell. (*Id.* at 42.) The assault lasted several minutes, after which Green, Ramsey, and Hanna left Younger unconscious in a pool of his own blood. (*Id.* at 43.)

Ramsey and Green returned about an hour later to bring Plaintiff to the medical unit, where they ordered Plaintiff to write that he "fell off the top bunk." (*Id.* at 48-50.) Younger sustained injuries to his face, head, wrists, ribs, right hand and right leg, and could not get out of bed for weeks due to the leg injury. (*Id.* at 51-52, 59.) Younger also reported headaches and anxiety months after the attack. (Pl.'s Trial Exhibit 3, ECF No. 298-9.) He spent several months in a prison hospital to treat his leg and head injuries. (Jan. 28, 2020 Trial Tr. at 66, ECF No. 296.) Younger returned to Maryland in 2014 and underwent surgery to repair his leg muscle in April 2018. (*Id.*) At trial, both Younger's medical expert and Defendant Crowder's medical expert agreed that Younger's injuries are permanent.

Defendants Hanna, Ramsey, and Green were convicted of their crimes in 2015 and 2016. *See State v. Hanna*, Case No. 114260031 (Balt. City Cir. Ct.), filed Sept. 17, 2014 (May 6, 2015 guilty plea of conspiracy to

commit first degree assault); *State v. Ramsey*, Case No. 114260032 (Balt. City Cir. Ct.), filed Sept. 17, 2014 (April 1, 2016 guilty verdict on charges of second-degree assault and misconduct in office); *State v. Green*, Case No. 114260029 (Balt. City Cir. Ct.), filed Sept. 17, 2014 (April 1, 2016 guilty verdict on charges of second-degree assault and misconduct in office). On September 28, 2016, Younger filed this action, pursuing claims under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983, against his assailants (Defendants Hanna, Ramsey, and Green) and against the Division of Correction officials whom he contended were responsible—Defendants Warden Crowder, Major Singletary, and Lieutenant Dupree. In addition, Plaintiff sued the State of Maryland. (Compl., ECF No 1.) In August 2017, this Court dismissed the State of Maryland from this action on sovereign immunity grounds, prompting Younger to sue the State in the Circuit Court for Baltimore City, Maryland. (ECF No. 72.) In June 2019, a jury returned a verdict in Younger's favor in the State case. (ECF No. 166-5.)

In August 2019, following proceedings in the State action, Defendants Crowder, Singletary, and Dupree moved to dismiss the claims against them. This Court denied the Motions in November 2019. (ECF No. 188.) Defendants Crowder, Singletary, and Dupree also moved for summary judgment. (ECF Nos. 185, 186, 187.) This Court denied Defendants Singletary and Dupree's Motions *in toto*, but granted in part and denied in part Defendant Crowder's Motion, entering summary judgment in Crowder's favor on Younger's claim that Crowder exhibited deliberate indifference to Younger's medical needs and the false charges entered against him, but denying summary judgment as to the other claims asserted against Crowder. (ECF No. 217.) In addition,

this Court found that qualified immunity did not shield Crowder from Younger's claims because Fourth Circuit precedent sufficiently notified Crowder that failing to take action to protect inmates from abuses at the hands of correctional officers could lead to supervisory liability under § 1983. (*Id.* at 25 (citing *Thompson v. Virginia*, 878 F.3d 89, 109 (4th Cir. 2017)).

On January 21, 2020, this case proceeded to a jury trial against Defendants Ramsey, Hanna, Green, Crowder, Singletary, and Dupree. On January 29, 2020, at the close of Plaintiff's case, this Court granted Defendant Singletary's Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(a), entering judgment in favor of Singletary. (ECF No. 245.) The same day, Younger voluntarily dismissed with prejudice Counts III, IV, V, VI, VII, VIII, and IX of the Amended Complaint and dismissed his claim for punitive damages in Count II as to Defendants Green, Ramsey, and Hanna. (ECF Nos. 246, 247.) Accordingly, the remaining Counts for the jury's consideration were: Count I – Violation of the Fourteenth Amendment to the United States Constitution asserted against Defendants Tyrone Crowder and Neil Dupree under a theory of supervisory liability; and Count II – Violation of the Fourteenth Amendment to the United States Constitution asserted against Defendants Jemiah L Green, Richard N. Hanna, and Kwasi H. Ramsey. On February 3, 2020, the jury returned a verdict in favor of Plaintiff against Defendants Crowder, Dupree, Green, Hanna, and Ramsey in the amount of $700,000.00.[1] (ECF Nos. 265, 266.)

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[1] Defendants Green and Hanna acknowledged their liability. Accordingly, the jury was only asked to determine whether

On February 18, 2020, Plaintiff filed a Motion for Attorneys' Fees and Litigation Costs. (ECF No. 268.) On February 19, 2020, Defendant Crowder filed a Motion to Stay Enforcement of the Judgment, arguing that, as an "agent" of the State of Maryland, he is not required to post a supersedeas or appeal bond pursuant to Local Rule 110.1.b. (ECF No. 269.) On February 21, 2020, *pro se* Defendant Ramsey filed an appeal with the United States Court of Appeals for the Fourth Circuit. (ECF No. 270.) On February 25, 2020, Defendant Dupree filed a Motion to Stay Enforcement of the Judgment without posting bond, echoing Crowder's argument under Local Rule 110.1.b. (ECF No. 273.) On February 27, 2020, *pro se* Defendant Green filed an appeal with the Fourth Circuit. (ECF No. 276.) On March 2, 2020, Defendant Crowder filed a Motion for Judgment, or, in the Alternative, for Remittitur. (ECF No. 279.) Defendant Dupree also filed a Motion for Remittitur, adopting Defendant Crowder's arguments. (ECF No. 282.) Also on March 2, 2020, Defendant Ramsey filed a Motion to Stay Enforcement of Judgement, echoing Crowder's and Dupree's arguments under Local Rule 110.1.b. (ECF No. 280.) On March 6, 2020, Ramsey filed a Motion for Preparation of District Court's Transcripts at Government Expense. (ECF No. 293.)

On April 7, 2020, this Court denied without prejudice Plaintiff's Motion for Attorneys' Fees and Litigation Costs pending appeal and granted Defendants Crowder and Dupree's Motions to Stay Enforcement of the Judgment. (Letter Order, ECF No. 297.) The Court also extended the briefing deadlines for the following motions: Defendant Crowder's Rule 50(b) Motion for Judgment or,

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Defendant Ramsey was liable under Count II. (*See* Jury Verdict, ECF No. 265.)

in the Alternative, for Remittitur (ECF No. 279); *Pro se* Defendant Ramsey's Motion to Stay Enforcement of Judgement (ECF No. 280); Defendant Dupree's Motion for Remittitur (ECF No. 282); and *Pro se* Defendant Ramsey's Motion for Preparation of District Court's Transcripts at Government Expense (ECF No. 293). (*Id.*) Those motions are now ripe.

STANDARD OF REVIEW

Under Rule 50 of the Federal Rules of Civil Procedure, judgment as a matter of law should be granted against a party when that party "has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue." *Coryn Grp. II, LLC* v. *O.C. Seacrets, Inc.,* 868 F. Supp. 2d 468, 483 (D. Md. 2012) (citation omitted). Rule 50 permits a litigant to renew its motion for judgment as a matter of law even after judgment has been entered. Fed. R. Civ. P. 50(b). In considering a motion under Rule 50, the court views the evidence in the light most favorable to the non-movant, *Gregg* v. *Ham,* 678 F.3d 333, 341 (4th Cir. 2012), gives that party the benefit of all reasonable inferences from the evidence, *Whalen* v. *Roanoke Cnty. Bd. of Supervisors,* 769 F.2d 221, 224 (4th Cir. 1985), and asks whether there is "substantial evidence in the record to support the jury's findings," *Anderson* v. *Russell,* 247 F.3d 125, 129 (4th Cir. 2001) (citation omitted). However, "the court may not make credibility determinations or weigh the evidence." *Reeves* v. *Sanderson Plumbing,* 530 U.S. 133, 150-51 (2000) (quoting *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986)).

A litigant may also challenge a jury verdict and/or judgment under Rule 59 of the Federal Rules of Civil Procedure, but it is an "extraordinary remedy which should be used sparingly." *See Pacific Ins. Co. v.*

American Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Under Rule 59(a)(1)(A), a court may grant a new trial on all or some issues "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59. As relevant here, a litigant's challenge to an excessive damages award may be pursued under Federal Rule 59(a) for a new trial *nisi remittitur. See Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3d587, 593 (4th Cir. 1996). Whether a jury award is excessive is a question of law. *Konkel v. Bob Evans Farms, Inc.*, 165 F.3d 275, 280 (4th Cir. 1999).

In an action based on federal question jurisdiction, such as this case, the court must apply the federal standard for remittitur. *See McCollum v. Daniel*, 136 F. Supp. 2d 472, 476 (D. Md. 2001), *aff'd*, 32 F. App'x 49 (4th Cir. 2002). Compensatory damages are deemed excessive when they are "against the clear weight of the evidence, or based upon evidence which is false, or will result in a miscarriage of justice." *Id.* (quoting *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 305 (4th Cir. 1998)). If the court finds that a jury award is excessive, it may "grant a new trial *nisi* remittitur, which gives the plaintiff the option of accepting the remittitur or of submitting to a new trial." *Cline*, 144 F.3d at 305 n.2 (4th Cir. 1998). Unlike a motion under Rule 50, when considering a motion for a new trial under Rule 59, "a trial judge may weigh the evidence and consider the credibility of the witnesses." *Poynter by Poynter v. Ratcliff*, 874 F.2d 219, 223 (4th Cir. 1989); *see also McCollum v. McDaniel*, 136 F. Supp. 2d 472, 475 (D. Md. 2001).

ANALYSIS

Defendant Crowder seeks relief under Federal Rule of Civil Procedure 50(b), asking this Court to grant

judgment in his favor notwithstanding the verdict because he asserts that the evidence was insufficient to establish liability under 42 U.S.C. § 1983 for deliberate indifference and that he is entitled to qualified immunity. (ECF No. 279.) In the alternative, Crowder seeks remittitur under Rule 59(a), requesting that the Court reduce the amount of the judgment to coincide with the evidence in the case and with judgments in similar cases. (*Id.*) Defendant Dupree also seeks remittitur and adopts and incorporates Crowder's arguments. (ECF No. 282.) As discussed below, Defendant Crowder's Rule 50(b) Motion for Judgment or, in the Alternative, for Remittitur (ECF No. 279) and Defendant Dupree's Motion for Remittitur (ECF No. 282) shall be DENIED.

Defendant Ramsey, proceeding *pro se*, has filed a Motion to Stay Enforcement of Judgment (ECF No. 280), seeking the same relief pursuant to Local Rule 101.1.b that the Court has already granted for Defendants Crowder and Dupree (ECF No. 297). Local Rule 110.1.b provides: "[u]nless otherwise ordered by the Court, the state of Maryland, any of its political subdivisions, and any agents thereof shall not be required to post a supersedeas or appeal bond." Local Rule 110.1.b (D. Md. 2018). Accordingly, Ramsey, as an agent of the State like Crowder and Dupree, shall not be required to post an appeal bond, and his Motion to Stay Enforcement of Judgment (ECF No. 280), which is unopposed, is GRANTED. In addition, Ramsey filed a Motion for Preparation of District Court's Transcripts at Government Expense (ECF No. 293), in which he seeks copies of the trial transcripts in this case. Ramsey's request is moot as all of the transcripts that were requested became publicly available, without restriction, on June 4, 2020. (*See* ECF Nos. 289, 290, 291, 292, 295, 296.) Accordingly, Ramsey's Motion for Preparation of

District Court's Transcripts at Government Expense (ECF No. 293) is DENIED AS MOOT.

I. Rule 50 Motion (ECF No. 279)

Under Rule 50, Defendant Crowder asks this Court to grant him judgment notwithstanding the verdict on the basis that there was insufficient evidence for the jury to find that Crowder was deliberately indifferent to Plaintiff Younger's constitutional rights and because Crowder is entitled to qualified immunity. Crowder's arguments are unavailing.

A. Deliberate Indifference

The jury found Defendant Crowder liable for the assault on Plaintiff Younger based on a theory of supervisory liability under 42 U.S.C. § 1983. (*See* Jury Verdict, ECF No. 265.) To establish supervisory liability under § 1983, Younger was required to show:

> (1) that the supervisor had actual or constructive knowledge that h[is] subordinate was engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like the plaintiff;
>
> (2) that the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices,'; and
>
> (3) that there was an 'affirmative causal link' between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.

Wilkins v. Montgomery, 751 F.3d 214, 226 (4th Cir. 2014) (quoting *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). To show a pervasive and unreasonable risk of constitutional injury, Younger had to produce evidence

that inmate assaults were "widespread, or at least used on several different occasions and that the conduct engaged in by the subordinates poses an unreasonable risk of harm of constitutional injury." *Id.* To satisfy the second element Younger had to "demonstrate[e] a supervisor's continued inaction in the face of documented widespread abuses." *Id.* To meet the third element, Younger had to present "direct" proof of causation "where the policy commands the injury of which plaintiff complains . . . or may be supplied by the tort principle that holds a person liable for the natural consequences of his actions." *Id.* Ultimately, the issue of supervisory liability "is ordinarily one of fact, not law." *Shaw*, 13 F.3d at 799.

As a pre-trial detainee, Plaintiff Younger was required to establish deliberate indifference by Crowder to prevail on a theory of supervisory liability. *See, e.g.*, *Thompson v. Friday*, JKB-18-2186, 2019 WL 6528975, at *4 (D. Md. Dec. 4, 2019) (applying traditional supervisory liability framework to claim against supervisor for subordinates' use of excessive force against pre-trial detainee); *Ozah v. Fretwell*, CCB-18-1063, 2019 WL 4060387, at *8-9 (D. Md. Aug 28, 2019) (applying "deliberate indifference" state of mind requirement in pre-trial detainee case and collecting cases for support). As this Court has previously explained, Younger did not need to demonstrate that Crowder was aware of a potential attack against Younger specifically, but rather that Crowder was aware of a substantial risk of harm to those *like* Younger (*i.e.*, prisoners at MRDCC). (*See* ECF Nos. 188 at 26, 217 at 20-21 n. 5 (citing *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994)).)

There was ample evidence at trial to establish Defendant Crowder's deliberate indifference to Younger's constitutional rights under the Fourteenth Amendment. Indeed, there is abundant testimony from

Crowder's colleagues at the MRDCC revealing that they raised serious concerns with Defendant Crowder about Defendants Green, Hanna, and Ramsey's uses of excessive force prior to the assault on Plaintiff Younger. For example, Felicia Hinton, Crowder's supervisor and the assistant regional commissioner who was the previous Warden of MRDCC, testified that, prior to the assault on Younger, she told Crowder about her decision to reassign Defendant Green to a different shift and that Green "was trouble." (Jan. 22, 2020 Trial Tr. at 53-54, ECF No. 291.) Assistant Warden Suzanne Fisher testified that she also raised concerns about Defendants Green, Ramsey, and Hanna with Defendant Crowder. (Jan. 23, 2020 Trial Tr. at 20-22, ECF No. 289.) She testified that she explained to Crowder in 2012 that "Green, Ramsey, and Hanna were starting to show up on use of force reports," including sometimes on serious incident reports. (*Id.* at 21-22.) When Fisher learned that several inmates had attacked a correctional officer, she discussed her concerns with Crowder about the safety and security of MRDCC and about potential retaliation by officers against the inmates. (*Id.* at 16-19.)

Finally, Administrative Captain Raymond Pere, the administrative/investigative captain for MRDCC from November 2012 through March 2014, was responsible for investigating staff for violations of standards of conduct, including uses of force. (Jan. 23, 2020 Trial Tr. At 100-102, ECF No. 289.) Captain Pere testified that, in early 2013, he approached Defendant Crowder with concerns about Defendant Green and other officers and their need for additional training on the use of force with inmates. (*Id.* at 112-114.) Pere also testified about his meeting with the supervisors in MRDCC where he relayed a concern about the prison staff "not performing their duties as required."

(*Id.* at 123-124.) Pere testified that the supervisors "just didn't respond." (*Id.*)

Despite these explicit warnings from Hinton, Fisher, and Pere, the record reflects that Crowder did not take any significant measures to prevent attacks on inmates. After the assault on Younger, Ms. Hinton recommended that Crowder be terminated from his position as Warden because he did not timely notify her of the assault on inmates and "[b]ecause ultimately the warden is responsible for the actions of their staff. For the incidents that take place, present or not…" (*Id.* at 107-108.)

Crowder argues that he was not deliberately indifferent because the nature of the attack on Younger was unprecedented in his experience and because he responded reasonably after the attack on the correctional officer that resulted in the retaliatory attack on Younger. However, "the court may not make credibility determinations or weigh the evidence." *Reeves* v. *Sanderson Plumbing,* 530 U.S. 133, 150-51 (2000) (quoting *Anderson* v. *Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986)). This Court may only determine whether there was "substantial evidence in the record to support the jury's findings," which this Court is satisfied there was. *See Anderson* v. *Russell,* 247 F.3d 125, 129 (4th Cir. 2001) (citation omitted).

B. Qualified Immunity

Crowder also argues that he is entitled to qualified immunity because his conduct did not violate any clearly established right of Plaintiff Younger. "Qualified immunity shields government officials from liability in a § 1983 suit as long as their conduct has not violated 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Humbert v. Mayor & City Council of Baltimore City*, 866 F.3d 546,

555 (4th Cir. 2017) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "To determine whether an officer is entitled to qualified immunity, the court must examine (1) whether the facts illustrate that the officer violated the plaintiff's constitutional right . . . , and (2) whether the right was clearly established at the time of the alleged event such that 'a reasonable officer would have understood that his conduct violated the asserted right.' " *Id.* (quoting *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007)). "The answer to both questions must be in the affirmative to defeat the officer's entitlement to immunity." *Id.*

This Court has repeatedly rejected Crowder's assertion of qualified immunity, both on summary judgment and at trial. As the Court noted in its December 19, 2019 Memorandum Opinion denying Crowder's summary judgment motion on qualified immunity:

> Fourth Circuit precedent sufficiently notified Crowder that failing to take action to protect inmates from abuses at the hands of correctional officers could lead to supervisory liability under § 1983. The Fourth Circuit has recently affirmed that prisoners "have an Eighth Amendment right to be protected from malicious attacks, not just by other inmates, but also from the very officials tasked with ensuring their security" and that this right was clearly established as of April 2010. *Thompson v. Virginia*, 878 F.3d 89, 109 (4th Cir. 2017). Accordingly, qualified immunity cannot shield Crowder from Younger's claims.

(ECF No. 217 at 25.) At trial, this Court also denied Crowder's Rule 50 Motion on qualified immunity, reiterating its earlier findings on summary judgment and distinguishing *Adams v.* Ferguson, 884 F.3d 219 (4th Cir. 2019), the case upon which Crowder continues to rely.

(Jan. 31, 2020 Trial Tr. at 6-7, ECF No. 298-2.) The Court explained that in *Adams*, " [t]he Fourth Circuit found that the commissioner was entitled to qualified immunity because no clearly established law dictates that housing mentally ill inmates in prisons rather than transferring them to mental health facilities automatically and alone amounts to objectively excessive risk." (*Id.*) The Court found that *Adams* "has no applicability here" where the "entire case is with respect to what is alleged to have been a lawless prison environment." (*Id.*) For these same reasons, this Court reiterates its finding that Defendant Crowder is not entitled to qualified immunity in this case. In sum, this Court finds no basis for Defendant Crowder's requested relief under Rule 50, and his Motion for Judgment (ECF No. 279) is DENIED.

II. Rule 59 Motions (ECF Nos. 279, 282)

In the alternative, Defendant Crowder seeks remittitur under Rule 59(a), requesting that the Court reduce the amount of the jury's verdict of $700,000 in compensatory damages to coincide with the evidence in the case and with judgments in similar cases. (ECF No. 279.) Defendant Dupree also seeks remittitur and adopts and incorporates Crowder's arguments.[2] (ECF No. 282.) "[J]ury determinations of factual matters such as … the amount of compensatory damages will be reviewed by determining whether the jury's verdict is against the weight of the evidence or based on evidence which is false." *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 305 (4th Cir. 1998) (quoting *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3d 587, 594 (4th Cir. 1996)). This review requires a "comparison of the factual

[2] While the Court will refer to "Crowder's arguments" *infra*, it is assumed that these are Dupree's arguments as well.

record and the verdict to determine their compatibility." *Id.*

Here, the jury's award of $700,000 in compensatory damages is compatible with the factual record. The evidence presented at trial revealed that Younger endured a brutal attack by three correctional officers in his prison cell, with the officers brandishing mace, radios, and handcuffs as weapons. (Jan. 28, 2020 Trial Tr. at 41, ECF No. 296.) The officers, Defendants Green, Ramsey, and Hanna slammed Younger's head against the concrete floor and against the toilet seat. (*Id.* at 42.) The assault lasted several minutes, after which Green, Ramsey, and Hanna left Younger unconscious in a pool of his own blood. (*Id.* at 43.)

Ramsey and Green returned about an hour later to bring Plaintiff to the medical unit, where they ordered Plaintiff to write that he "fell off the top bunk," which Plaintiff did in fear for his life. (*Id.* at 48-50.) Younger sustained injuries to his face, head, wrists, ribs, right hand and right leg, and could not get out of bed for weeks due to the leg injury. (*Id.* at 51-52, 59; *see also* Pl.'s Trial Exhibit 2, ECF No. 298-8.) Younger also reported headaches and anxiety months after the attack. (Pl.'s Trial Exhibit 3, ECF No. 298-9.) He spent several months in a prison hospital to treat his leg and head injuries. (Jan. 28, 2020 Trial Tr. at 65-66, ECF No. 296.) He also saw a psychologist once a week during that time. (*Id.*) Younger returned to Maryland in 2014 and underwent surgery to repair his leg muscle in April 2018. (*Id.*) At trial, both Younger's medical expert and Defendant Crowder's medical expert agreed that Younger's injuries are permanent. Although Younger has found employment and lives on his own, he testified that he lives in persistent fear of being attacked. (Jan. 28, 2020 Trial Tr. at 71-73, ECF No. 296.) He attends a weekly support group to help

with his fears and every night, he pushes a heavy dresser in front of his bedroom door. (*Id.*) Younger's permanent physical injuries combined with his continued mental anguish and fear of harm due to the assault support the jury's award of $700,000 in compensatory damages.

Contrary to Crowder's assertion, the jury's award is not inconsistent with *compensatory* damage awards in other excessive force cases in this district. In *Butler v. Windsor*, 143 F. Supp. 3d 332, 336 (D. Md. 2015), the *punitive* damages award was reduced after a consideration of "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." These considerations are not required when reviewing a jury's award of compensatory damages. *See Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 305 (4th Cir. 1998) ("[J]ury determinations of factual matters such as … the amount of compensatory damages will be reviewed by determining whether the jury's verdict is against the weight of the evidence or based on evidence which is false.") (citations omitted). In the 1995 case, *Thorne v. Wise*, 47 F.3d 1165 (Table) (4th Cir.), the Fourth Circuit affirmed a $250,000 compensatory damages award for a plaintiff who, after fleeing police in a high-speed pursuit, was tackled and beaten by state troopers resulting in a broken jaw, fractured eye socket, a black eye, chipped teeth, and bruising.

In *Francis v. Johnson*, 219 Md. App. 531, 537 (2014), the Maryland Court of Special Appeals reduced a compensatory damages award to $300,000 for a plaintiff who was held against his will for one hour and, aside from emotional distress, did not suffer any physical or

economic loss. Finally, in *McCollum v. Daniel*, 136 F. Supp. 2d 472 (D. Md. 2001), this Court reduced the jury's compensatory damages award to $1.25 million for a plaintiff who lost his right eye and sustained permanent injury to his hand and mental anguish from the assault by three police officers, noting that "[n]either side has presented the court with a case directly parallel to this one." Similarly here, the parties have not presented the Court with a case that is directly on point to this one, and, indeed, Defendant Crowder concedes that the type of assault on Younger was "unprecedented." (*See* Crowder's Mot. At 16-17, ECF No. 279-1.) ("the evidence demonstrated that the type of assault perpetrated on Mr. Younger and others on the morning of September 30, 2013 was unprecedented.").) Consequently, after review of these cases and after comparison of the factual record in this case and the jury's verdict, this Court finds that the compensatory damages award of $700,000 was not excessive. Accordingly, Defendant Crowder's Motion for Remittitur (ECF No. 279) and Defendant Dupree's Motion for Remittitur (ECF No. 282) are DENIED.

CONCLUSION

For the reasons stated above, Defendant Crowder's Rule 50(b) Motion for Judgment or, in the Alternative, for Remittitur (ECF No. 279) is DENIED; *Pro se* Defendant Ramsey's Motion to Stay Enforcement of Judgement (ECF No. 280) is GRANTED as unopposed; Defendant Dupree's Motion for Remittitur (ECF No. 282) is DENIED; and *Pro se* Defendant Ramsey's Motion for Preparation of District Court's Transcripts at Government Expense (ECF No. 293) is DENIED AS MOOT.

A separate Order follows.

Dated: February 17, 2021

_____/s/_____
Richard D. Bennett
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER,	*	
Plaintiff,	*	
v.	*	Civil Action No. RDB-16-3269
JEMIAH L. GREEN, *et al.*,	*	
Defendants.	*	

* * * * * * * * *

MEMORANDUM OPINION

Plaintiff Kevin Younger alleges that Sergeant Kwasi Ramsey ("Ramsey"), Sergeant Jemiah Green ("Green"), and Correctional Officer Richard Hanna ("Hanna") of the Maryland Department of Public Safety & Correctional Services ("DPSCS") assaulted him while he was incarcerated in the Maryland Reception, Diagnostic & Classification Center ("MRDCC"). In addition to Ramsey, Green, and Hanna, Younger also sues three supervisory employees: former MRDCC Warden Tyrone Crowder ("Crowder"), Major Wallace Singletary ("Singletary"), and Lieutenant Neil Dupree ("Dupree"). In August 2017, this Court dismissed the State of Maryland from this action on sovereign immunity grounds, prompting Younger to sue the State in the Circuit Court for Baltimore City, Maryland. (Mem. Op. of Aug. 22, 2017, ECF No. 72.) In June 2019, a jury returned a verdict in Younger's favor. (Verdict Sheet, ECF No. 166-5.).

In August 2019, following proceedings in the State action, Defendants Crowder, Singletary, and Dupree moved to dismiss the claims against them.[1] This Court denied the Motions in November 2019. (Mem. Op. of Nov. 19, 2019, ECF No. 188.) Now pending are three Motions[2] for Summary Judgment: Defendant Crowder's Motion for Summary Judgment (ECF No. 185); Defendant Dupree's Motion for Summary Judgment (ECF No. 186); and the Motion for Summary Judgment for all Claims in Amended Complaint against Defendant Wallace Singletary (ECF No. 187). The Court has reviewed the parties' submissions and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the reasons stated herein, Defendant Crowder's Motion for Summary Judgment (ECF No. 185) is GRANTED IN PART and DENIED IN PART. Specifically, Summary Judgment is ENTERED in Crowder's favor on Younger's claim that Crowder exhibited deliberate indifference to Younger's medical needs and the false charges entered against him, but is DENIED as to all other claims asserted against him. Defendant Dupree's Motion for Summary Judgment (ECF No. 186) and the Motion for Summary Judgment for all Claims in Amended Complaint against Defendant Wallace Singletary (ECF No. 187) are DENIED *in toto*.

BACKGROUND

In ruling on a motion for summary judgment, this Court reviews the facts and all reasonable inferences in the light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769 (2007); *Hardwick ex rel. Hardwick v. Heyward*, 711 F.3d 426, 433 (4th Cir. 2013). This Court also takes judicial notice of the

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[1] Defendants Ramsey, Green, and Hanna are proceeding *pro se*.

[2] On December 9, 2019, the parties filed several motions *in limine* which will be resolved in due course.

State action, *Younger v. Maryland*, Case No. 24-C-17-004752 (Balt. City Cir. Ct.), filed Sept. 21, 2017. This Court has recited the factual allegations in this case in two prior opinions. (ECF Nos. 72, 188.) For purposes of adjudicating the pending Motions for Summary Judgment, this Court presents an overview of the events and communications preceding Younger's assault.

During the trial in the State action, Richard Hanna testified that MRDCC was "pretty lawless" and that officer misconduct "goes from the top down." (Hanna Test., Trial Tr. June 5, 2019, 22:13-15, ECF No. 195-18.) Hanna testified at length on these matters, claiming that he carried out ordered hits against inmates "twice a week on average." (*Id.* at 22:5-9.) Hanna's comments at trial echo his earlier representations to an Internal Investigative Unit ("IIU") Detective following Younger's assault on September 30, 2013, in which he confessed to attacking Younger and described his assaults against other inmates that day. (Hanna Statement to Det. Wright, Feb. 26, 2015, ECF No. 195-17.)

Long before Ramsey, Green, and Hanna assaulted Younger on September 30, 2013, Warden Crowder was made aware of the assailant's violent proclivities and the general lawlessness pervading MRDCC. Between 2006 and 2009, Crowder served as Assistant Warden to Warden Felicia Hinton. During that time, Hinton recalls that Green "body slammed an inmate onto the floor" and knocked a handcuffed inmate to the ground. (Hinton Dep. 24:1-5, ECF No. 195-9.) Hinton discussed Green's behavior with Crowder sometime prior to 2013 and specifically told Crowder that Green "was trouble." (*Id.* at 133:8-12, 170:19-21.) As one of her last acts as Warden in 2009, Hinton moved Green to the overnight shift so that he would have fewer contacts with inmates. (*Id.* at 26:16-27:4, 113:14-17.) As soon as Hinton left MRDCC,

Crowder—now acting as Warden—transferred Green back to the dayshift. (*Id.* at 113:14-22.)

Suzanne Fisher, a DPSCS employee of 42 years who retired in 2015, also brought her concerns to Crowder. Fisher served as Assistant Warden to Warden Crowder from 2010 until 2013. (Fisher Dep. 11:9-20, ECF No. 195-12.) She became the Warden of MRDCC after Crowder was removed from the position in October 2013. (*Id.* at 11:18-12:4.) Fisher recalled that several officers, including Green and Ramsey, "always appeared in uses of force" reports (Fisher Statement to Det. Murray, 24:23-25, ECF No. 195-7.) In her interview with an investigator shortly after the Younger assault, Fisher explained that she had brought her concerns with these officers to Crowder. (*Id.* at 25:1-4.) In response, Crowder merely indicated that reports concerning the officers were to be expected because they were often first responders. (*Id.* at 25:5-6.) Fisher pressed the issue, responding: "I know, but if you're suspending 'em [sic] for uses of force, then you know you've got an issue. Excessive use of force, when you're suspending people, then you know you have an issue." (*Id.* at 25:6-8.) Several years later, during the State Court trial, Fisher claimed that she was only concerned that the officers would fail to transport inmates to the medical facility on time or "mess[] with their food." (Fisher Test., Trial Tr., June 4, 2019, at 230:10-14, ECF No. 185-14.)

Crowder also learned of Ramsey and Green's violent tendencies from Raymond Peré, who worked as an Investigative Captain between 2012 and 2013. (Peré Dep. 13:16-20, ECF No. 195-14.) Peré reported directly to Crowder. (*Id.* at 13:21-22.) In the spring of 2013, Peré notified Crowder that he was concerned with "unnecessary or avoidable uses of force." (*Id.* at 29:8-13.) In his October 2013 interview with an investigator, Peré

recalled reporting an instance of "excessive use of force"[3] to Crowder in which an officer "sprayed [an] inmate through the [food] slot" even though the prisoner was "in a cell . . . in a secure area." (Peré Statement to Det. Murray 13:9-14:2, ECF No. 195-10.) Crowder disregarded Peré's concerns, responding "oh, that's a knee jerk reaction." (*Id.* 14:1-2.) In the same interview, Peré also recalled telling Crowder "you got some staff here like [sic] to put their hands on inmates. . . . They take the opportunity, when it arises, to put their hands on inmates . . . . [Y]ou need to do something with 'em." (*Id.* 16:5-20.) When Peré perceived that Crowder had not taken appropriate action, he administered impromptu use of force training to Green and other officers. (*Id.* at 17:13-18.)

The actions of Ramsey, Green, and Hanna were well documented. At the time of Younger's assault, Ramsey and Green had four pending criminal assault investigations. (IIU Case Histories for Green and Ramsey, ECF No. 195-6.) In the investigation report produced following Younger's assault, Detective Murray wrote: "During this investigation, I requested and received a copy of the Use of Force reports that had occurred at MRDCC between September 2012 and October 2013. There were approximately thirteen (13) Use of Force incidents during that period of time. Out of those thirteen (13) Use of Force incidents, one incident did not include Sergeant Ramsey, Sergeant Green, or CO II Hanna." (IIU 13-35-01347 at 14, ECF No. 195-2.) In the State Court trial, Crowder testified that he had an "opportunity to see all written use of force reports before

[3] Later in his interview, Peré re-characterized this event as "unnecessary" rather than "excessive" use of force. (Peré Dep. 14:8-14.)

they were completely final." (Crowder Test., Trial Tr., June 10, 2019, 284:15-19, ECF No. 195-4.)

Despite repeated warnings and well-documented red flags, Crowder is alleged to have failed to take adequate steps to protect Younger and inmates like him from assaults by correctional officers. On September 29, 2013, Correctional Officer Alade Ganiyu was assaulted by inmate Raymond Lee. (Younger Dep. 30:15-37:17, ECF No. 185-5.) The next day, on September 30, 2013, Ramsey, Green, and Hanna assaulted Younger and other inmates in misplaced retaliation for the assault on Officer Ganiyu. (Hanna Dep. 62:7-15, ECF No. 185-3; Younger Dep. 67:6-68:21.) Later that day, Ramsey and Green returned and transported Younger to the medical unit, where he was treated by a nurse and Virenda V. Chhunchha, M.D. (Younger Dep. 96:9-13; Chhunchha Dep. 21:3-4, ECF No. 185-15.) Following his assault, Younger was administratively charged in connection with the assault against Ganiyu and was required to serve a term of solitary confinement.

STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that a court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A material fact is one that "might affect the outcome of the suit under the governing law." *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Thus, summary judgment is proper "only when no 'reasonable jury could return a verdict for the nonmoving party.'" *Monon Corp. v. Stoughton Trailers, Inc.*, 239 F.3d 1253, 1257 (Fed. Cir. 2001) (quoting *Anderson*, 477 U.S. at 255)). When

considering a motion for summary judgment, a judge's function is limited to determining whether sufficient evidence exists on a claimed factual dispute to warrant submission of the matter to a jury for resolution at trial. *Anderson*, 477 U.S. at 249.

In undertaking this inquiry, this Court must consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Libertarian Party of Va.*, 718 F.3d at 312; *see also Scott v. Harris*, 550 U.S. 372, 378 (2007). However, this Court must also abide by its affirmative obligation to prevent factually unsupported claims and defenses from going to trial. *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993). If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment must be granted. *Anderson*, 477 U.S. at 249-50. On the other hand, a party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *see also In re Apex Express Corp.*, 190 F.3d 624, 633 (4th Cir. 1999). As this Court has previously explained, a "party cannot create a genuine dispute of material fact through mere speculation or compilation of inferences." *Shin v. Shalala*, 166 F. Supp. 2d 373, 375 (D. Md. 2001) (citations omitted).

ANALYSIS

I. Admissibility of IIU Reports.

Defendant Crowder argues that there is no "admissible evidence" indicating that he knew about "widespread and pervasive premeditated and retaliatory assaults on inmates." (Crowder Mot. 17, ECF No. 185-1.) In his Response, Plaintiff characterizes this argument as a "preview" of Crowder's expected attempts to exclude Internal Investigative Unit reports concerning Younger's

assault, and counters that the IIU reports are admissible as public records under Federal Rule of Evidence 803(8). (Younger Resp. 41, ECF No. 195.) Crowder has since filed a motion *in limine* seeking to exclude some of these materials from evidence at trial, contending that the IIU reports do not fall within the ambit of Rule 803(8). (ECF Nos. 205, 206.)

At this stage, this Court need not resolve whether the IIU reports, or some portion thereof, would be admissible at trial. At summary judgment, "the relevant question is not the admissibility of the evidence's current form but whether it can be presented in an admissible form at trial." *Manzur v. Daney*, PWG-14-2268, 2017 WL 930125, at *1 n.2 (D. Md. Mar. 9, 2017) (quoting Steven S. Gensler, 2 *Federal Rules of Civil Procedure, Rules & Commentary*, R. 56 (West 2017)). Much of the relevant material presented in the IIU reports may be presented in the form of witness testimony. For example, Plaintiff intends to call Fisher, Hinton, and Peré at trial (*see* Plaintiff's Proposed Witness and Exhibit List, ECF No. 191), each of whom may testify to the same matters disclosed in the course of the IIU investigations. Accordingly, this Court will consider the IIU reports in their entirety, including statements made to IIU detectives, to resolve the pending summary judgment motions.

II. Exhaustion of Administrative Remedies.

Dupree seeks dismissal of Younger's claims based on his failure to fully exhaust his administrative remedies in accordance with the Prisoner Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e. (Dupree Mot. 3-16, ECF No. 186-1.) The PLRA provides in pertinent part that:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any

> other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). For purposes of the PLRA, "the term 'prisoner' means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 42 U.S.C. § 1997e(h). The phrase "prison conditions" encompasses "all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532, 122 S. Ct. 983 (2002).

Notably, administrative exhaustion under § 1997e(a) is not a jurisdictional requirement. Rather, the failure to exhaust administrative remedies is an affirmative defense to be pleaded and proven by the defendants. *See Jones v. Bock*, 549 U.S. 199, 215-16, 127 S. Ct. 910 (2007); *Anderson v. XYZ Corr. Health Servs., Inc.*, 407 F.2d 674, 682 (4th Cir. 2005). Nevertheless, a claim that has not been exhausted may not be considered by this Court. *See Bock*, 549 U.S. at 220, 127 S. Ct. 910. In other words, exhaustion is mandatory. *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016). Therefore, a court ordinarily may not excuse a failure to exhaust. *Ross*, 136 S. Ct. at 1856 (citing *Miller v. French*, 530 U.S. 327, 337, 120 S. Ct. 2246 (2000) (explaining "[t]he mandatory 'shall' ... normally creates an obligation impervious to judicial discretion")).

A prisoner must follow the required procedural steps in order to exhaust his administrative remedies. *Moore v. Bennette*, 517 F.3d 717, 725, 729 (4th Cir. 2008); *see*

Langford v. Couch, 50 F. Supp. 2d 544, 548 (E.D. Va. 1999) ("[T]he ... PLRA amendment made clear that exhaustion is now mandatory."). Exhaustion requires completion of "the administrative review process in accordance with the applicable procedural rules, including deadlines." *Woodford v. Ngo*, 548 U.S. 81, 88, 93, 126 S. Ct. 2378 (2006). The Court is nevertheless "obligated to ensure that any defects in [administrative] exhaustion were not procured from the action or inaction of prison officials." *Aquilar-Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007); *see Kaba v. Stepp*, 458 F.3d 678, 684 (7th Cir. 2006).

A prisoner is only required to exhaust "available" remedies that "are capable of use to obtain some relief for the action complained of." *Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016) (citation and quotation marks omitted). In *Ross,* the Supreme Court identified three circumstances in which an administrative remedy procedure may be unavailable: (1) if it operates as a simple "dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates"; (2) if the administrative scheme is "so confusing" or "opaque that it becomes, practically speaking, incapable of use"; or (3) if prison administrators "thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." *Id.* at 1859-60.

In this case, the parties spar over the extent to which the Maryland Department of Public Safety and Correctional Services' administrative remedy procedure ("ARP") is "available" upon the initiation of a parallel investigation by the Internal Investigative Unit. Under the ARP process, an inmate must first file a request for administrative remedy with the prison's warden. Department of Correction Directive ("DCD") 185-002 § V.B.1; *see also* DCD 185-003. If the warden denies the

ARP or fails to respond to it within an established time frame, the prisoner may file an appeal to the Commissioner of Corrections. Next, if the Commissioner of Corrections denies the inmate's appeal, he may file a grievance with the Inmate Grievance Office. Md. Code Regs. ("COMAR") 12.02.28.18; Md. Code Ann., Corr. Servs. § 10-206(a); COMAR 12.07.01.05(B). The prisoner's IGO filing must attach several documents, including: the initial request for administrative remedy, the warden's response to that request, a copy of the ARP appeal filed with the Commissioner of Correction, and a copy of the Commissioner's response. COMAR 12.07.01.04(B)(9)(a). Upon receipt, the IGO conducts a "preliminary review" of the submission and may dismiss the complaint upon determination that it is "wholly lacking in merit on its face." Corr. Servs. 10-207(a)-(b)(1); COMAR 12.07.01.06A-B.

If the IGO is unable to determine that the complaint is meritless, it must refer the matter to the Maryland Office of Administrative Hearings for adjudication by an administrative law judge. Corr. Servs. § 10-207(c); COMAR 12.07.01.07A. If the ALJ concludes that the inmate's complaint is wholly or partially meritorious, the decision constitutes a recommendation to the Secretary of DPSCS, who must make a final agency determination within fifteen days after receipt of the proposed decision of the ALJ. *See* COMAR 12.07.01.10(B); Corr. Servs. § 10-209(b)(2)(C). The inmate may seek judicial review of this decision, as well as of the IGO's decision to dismiss on preliminary review and the ALJ's decision to dismiss. Corr. Servs. § 10-210(b)(1). Judicial review in state court is not required to satisfy the PLRA's administrative exhaustion requirement. *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002).

The ARP process is not the only means of pursuing complaints against Maryland prison officials. Separately, the Internal Investigative Unit may investigate allegations of employee misconduct, including the use of excessive force. Md. Code Regs. 12.11.01.05(A)(3). When such an investigation is undertaken, the Department of Public Safety & Correctional Services' regulations direct the warden to dismiss a prisoner grievance if it shares the "same basis" as a pending IIU investigation. DCD 185-003 § VI.N.4. The dismissal must state: "Since this case shall be investigated by the IIU, no further action shall be taken within the ARP process." *Id.*

In *Ross v. Blake*, 136 S. Ct. 1850 (2016), the Supreme Court considered, *inter alia*, whether Maryland's ARP process was truly "available" for purposes of the PLRA upon the initiation of an IIU investigation. The Court noted that Maryland's grievance process had "some bewildering features" and expressed exasperation with the confounding interplay between the ARP and IIU process. *Id.* at 1860. On the one hand, the Court observed, Maryland prison wardens typically deny an ARP grievance while an IIU inquiry was underway. *Id.* at 1860-61. On the other hand, some prisoners were able to appeal the warden's dismissal based on the IIU inquiry, pursue their claims up the chain of the IGO, and receive a decision on the merits. *Id.* at 1861. Ultimately, the Court remanded the case to the Fourth Circuit with instructions to undertake a "thorough review" of ARP materials to determine the extent to which the ARP process was in fact "available" to litigants upon the commencement of an IIU inquiry.

Since *Ross*, this Court has repeatedly held that the availability of the IIU process "closes the door" to the ARP process. *Brightwell v. Hershberger*, DKC-11-3278, 2016 WL 4537766, at *8 (D. Md. Aug. 31, 2016). In other

words, the administrative remedy procedure is rendered unavailable upon the commencement of an investigation by the Internal Investigative Unit. This conclusion is supported by the Department's regulations, discussed *supra*, which directs wardens to dismiss grievances upon determining that a parallel IIU investigation is underway. Accordingly, an IIU investigation fully satisfies the PLRA' exhaustion requirement. *See Carmichael v. Buss*, TDC-14-3037, 2017 WL 2537225, at *5 (D. Md. June 9, 2017); *Oakes v. Dep't of Pub. Safety*, GLR-14-2002, 2016 WL 6822470, at *4-5 (D. Md. Nov. 18, 2016); *Brightwell*, 2016 WL 4537766, at *8.

Defendants contend that *Brightwell* and *Oakes* are fatally flawed decisions because they ignore that the inmate-plaintiffs in those cases were able to proceed through the ARP process despite the existence of an IIU investigation. In a similar vein, Defendants suggest that the ARP process remained available to Younger despite the IIU investigation because another inmate, Raymond Lee, was able to successfully proceed through the ARP procedures. (Dupree Mot. 12, ECF No. 186-1.) An "available" administrative process, however, cannot turn on a petitioner's steadfast refusal to accept the Department's own procedural rules, which require dismissal of grievances when a parallel IIU investigation is underway. In the words of the United States Supreme Court, this "seemingly unusual process" is "perplexing in relation to normal appellate procedure." *Ross*, 136 S. Ct. at 1861; *see also Carmichael*, 2017 WL 2537225, at *5 (discussing how the Supreme Court revealed the "absurdity of this approach" in *Ross*). A process which is only "available" to the extent that a petitioner seeks to circumvent it through dogged, and evidently meritless, appeals is in fact not "available" at all. It is too "opaque" to be "capable of use." *Ross*, 136 S. Ct. at 1859.

In this case, Younger claims that he "kept filling" out timely ARPs but "never heard back" because he had been transferred from MRDCC to another institution to serve a term of solitary confinement, a punishment imposed for his alleged involvement in the Ganiyu assault. (Younger Dep. 157:5-158:13.) Dupree has attached to his Motion for Summary Judgment the declaration of a previously undisclosed witness, Executive Director of the IGO F. Todd Taylor, Jr., who avers that the IGO's records contain only one grievance filed by Younger dated March 28, 2014 and that the IGO dismissed the grievance on November 25, 2014. (Taylor Decl. ¶ 5, ECF No. 186-4.) Younger claims that he was unable to present relevant documents to the IGO for its review because those documents had been confiscated from him when he was committed to solitary confinement. (Younger Resp. 48, ECF No. 195.)

The Court need not resolve disputes concerning Younger's adherence to the ARP process because the IIU investigation satisfied his obligation to subject his claims to administrative exhaustion. In this case, there is no dispute that the IIU undertook an investigation concerning Younger's assault. Had Younger filed an ARP within the allotted time period, it would have been subject to dismissal pursuant to DCD 185-003 § VI.N.4. The mere fact that Younger *potentially* could have skirted around this rule by advancing his claims up the chain of review is of no great moment. Such a procedural mechanism is not truly "available" in any meaningful sense and Younger was not required to pursue it. Accordingly, Younger has satisfied his administrative exhaustion requirements and the PLRA does not bar his claims.

III. Res Judicata and Judicial Estoppel.

In his Motion for Summary Judgment, Defendant Crowder argues that he is entitled to judgment as a matter of law on all claims asserted against him based on the doctrine of *res judicata* and principles of judicial estoppel. (Crowder Mot. ¶¶ 1, 5, ECF No. 185.) Defendants Dupree and Singletary have adopted these portions of Crowder's Motion. (Dupree Mot. 3, 16, ECF No. 186-1; Singletary Mot. 3, ECF No. 187-1.) These same arguments were presented in the Defendants' motions to dismiss and were rejected by this Court. (ECF No. 188.) Accordingly, this Opinion does not address these arguments.

IV. Younger's State Law Claims Against Crowder, Dupree, and Singletary.

In Counts Four, Eight, and Nine, Younger brings claims under Maryland law against Crowder, Dupree, and Singletary. In Count Four, Younger sues for violations of Maryland Declaration of Rights, Article 24. Specifically, Younger alleges violations of his right under the Maryland Declaration of Rights "to bodily integrity, to be secure in his person from excessive force, and to be free from known risks of serious physical harm." (Am. Compl. ¶ 122, ECF No. 140.) In Count Eight, Younger brings a claim of negligent retention, training, and supervision against Crowder, Dupree, and Singletary. Finally, in Count Nine, Younger alleges that Crowder, Dupree, and Singletary acted negligently.

Crowder argues that he is immune to these claims under the Maryland Tort Claims Act because "Mr. Younger does not allege, and there is no evidence in the record to show, that Mr. Crowder acted with malice or gross negligence." (Crowder Mot. 11, ECF No. 185-1.) Dupree and Singletary do not join this argument.

The Maryland Tort Claims Act affords immunity to state officials for tortious acts or omissions "committed within the scope of their duties when the violations are made 'without malice or gross negligence.'" *Housley v. Holquist*, 879 F. Supp. 2d 472, 482–83 (D. Md. 2011) (quoting *Lee v. Cline*, 863 A.2d 297, 304 (Md. 2004)). In this context, "malice" means "actual malice" or "conduct 'characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud.'" *Lee v. Cline*, 384 Md. 245, 268, 863 A.2d 297, 311 (2004). "[A]n officer's actions are grossly negligent 'when they are 'so heedless and incautious as necessarily to be deemed unlawful and wanton, manifesting such a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances so as to furnish evidence of indifference to consequences.'" *Housley v. Holquist*, 879 F. Supp. 2d 472, 482-83 (D. Md. 2011) (quoting *Henry v. Purnell*, 652 F.3d 524, 536 (4th Cir. 2011)). The Fourth Circuit has made clear that "[w]hether an officer's actions are grossly negligent, and therefore unprotected by statutory immunity, is generally a question for the jury." *Henry*, 652 F.3d at 536 (citing *Taylor v. Harford County Dep't of Soc. Servs.*, 862 A.2d 1026, 1034 (Md. 2004)).

Plaintiff has presented sufficient evidence to raise a genuine dispute of fact concerning whether Crowder exhibited malice or gross negligence.[4] Throughout his

[4] As noted in this Court's prior Memorandum Opinion, Younger has withdrawn his gross negligence cause of action. (Mem. Op. 22 n.9, ECF No. 188.) Nevertheless, he has sufficiently alleged gross negligence. A plaintiff may pursue a negligence claim against a state official so long as the plaintiff has also alleged facts supporting a gross negligence claim. *See Catterton v. Coale*, 84 Md. App. 337, 579 A.2d 781 (Md. Ct. Spec. App. 1990) (holding that negligence claim against

tenure at MRDCC, Crowder's staff repeatedly warned him about the dangers that Ramsey, Green, and Hanna posed to inmates. There is evidence that Crowder chose to disregard these warnings rather than take appropriate corrective action. For example, there is evidence that Crowder brushed aside Fisher's concerns about Ramsey and Green's frequent appearance in use of force reports; disregarded Peré's complaints about inmate abuses; turned a blind eye to pervasive violence against inmates; and even acted to ensure that Green was placed near inmates despite his predecessor's warnings that he was "trouble" and efforts to remove him from the prison population. This evidence is sufficient to generate a genuine dispute of material fact as to whether Crowder displayed, at the very least, an "indifference to [the] consequences" of permitting Ramsey, Green, and Hanna to go unchecked. Accordingly, Younger's state law claims may proceed to a jury.

V. Younger's Incarceration Status.

As in their motions to dismiss, Defendants argue in their summary judgment submissions that Younger was not a "pre-trial detainee" but rather a full-fledged prisoner. The distinction is material because a different

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a county social worker should not have been dismissed as barred by the MTCA because plaintiff alleged that defendant social worker fabricated a report, thereby exhibiting malice or gross negligence); *Ross v. Cecil Cnty. Dep't of Soc. Servs.*, 878 F. Supp. 2d 606, 623 (D. Md. 2012) ("The complaint need not expressly assert that the defendants acted with malice or gross negligence if it 'alleges facts that . . . could establish actual malice if ultimately supported by evidence and believed by a fact finder.'" (quoting *Muhammad v. Maryland*, ELH-11-3761, 2012 WL 987309, at *2 (D. Md. Mar. 20, 2012))). *But see Walker v. Maryland*, MJG-16-3136, 2017 WL 3730349, at *9 (D. Md. Aug. 30, 2017) (summarily dismissing plaintiff's negligence claims and "any other common law claims based on negligent conduct" as barred by the MTCA).

legal framework may apply to Younger's state and federal constitutional claims depending on his incarceration status. (Crowder Mot. 15, ECF No. 185-1.) In his Motion to Dismiss, Crowder sought dismissal of Younger's claims under Article 24 of the Maryland Declaration of Rights because Younger was a prisoner, not a pre-trial detainee, and—Crowder argued—prisoners must pursue excessive force claims under Articles 16 and 25. (Crowder Mot. to Dismiss 33-34, ECF No. 154-1.) Younger has consistently maintained that he was a pre-trial detainee, argued that he may bring claims under Article 24, and urged the application of a more lenient, "objective" standard to his federal constitutional claims based on his incarceration status.

In a prior Memorandum Opinion (ECF No. 188), this Court rejected Defendants' calls to classify Younger a prisoner rather than a pre-trial detainee because "[a]ll parties to the State Court proceedings acknowledged" that Younger was a pre-trial detainee. (Mem. Op. 26-27, ECF No. 188.) Nevertheless, this Court noted that it would reconsider the issue should the evidence reveal that Younger was not a pre-trial detainee. (*Id.* at 27 n.11.) Now, at Summary Judgment, Crowder offers the Declaration of Judith Hemler, Deputy Director of the DPSCS Commitment Office, to argue that Younger was a convicted prisoner at the time of the attack. (Hemler Decl. ¶ 5, ECF No. 185-7.) Younger protests that Hemler was not disclosed as a witness until five weeks past the discovery deadline and less than sixty days before trial. (Younger Resp. 9, ECF No. 195.) Younger maintains that the issue should no longer be in dispute because Crowder agreed during the State trial that Younger was only "briefly" at MRDCC "as a part of a pretrial process." (Crowder Test., Trial Tr., June 10, 2019, 266:1-4, ECF No. 195-4.) Moreover, counsel from the Office of the Attorney

General—which is now representing Crowder, Dupree, and Singletary—formerly represented in prior litigation that Younger was a pre-trial detainee. (State's Motion *in Limine*, State Case, Paper No. 60/0, ECF No. 166-1; Join Statement of Facts, State Case, Paper No. 72/0, ECF No. 166-3.)

It can no longer be disputed that Younger was a pre-trial detainee. It is highly irregular for Crowder and his counsel to contradict their representations in the Sate case by asserting otherwise. The testimony of Judith Hemler was disclosed well after discovery had concluded and will be excluded from this Court's consideration and from trial. No other evidence suggests that Younger was a prisoner rather than a pre-trial detainee. Accordingly, Younger shall be deemed a pre-trial detainee for purposes of this case.

VI. Younger's Federal Constitutional Claims.

In Count One of the Amended Complaint, Younger brings claims under the auspices of 42 U.S.C. § 1983. Specifically, Younger alleges that Crowder, Dupree, and Singletary violated the following rights protected by the Eighth and Fourteenth Amendments to the United States Constitution: "(a) the right to be free from the use of excessive and unreasonable force and seizure; (b) the right to be free from a deprivation of life and liberty without due process of law; (c) the right to be free from known risks of serious physical harm; (d) the right to be free from deliberate indifference for a serious medical need; and (e) the right to be free from objectively unreasonable conduct that causes, or has the potential to cause, constitutional harm." (Am. Compl. ¶ 113, ECF No. 140.)

Younger pursues these claims against Crowder, Dupree, and Singletary under a theory of supervisory

liability. To establish supervisory liability under § 1983, Younger must show:

> (1) that the supervisor had actual or constructive knowledge that h[is] subordinate was engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like the plaintiff;
>
> (2) that the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices,'; and
>
> (3) that there was an 'affirmative causal link' between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.

Wilkins v. Montgomery, 751 F.3d 214, 226 (4th Cir. 2014) (quoting *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). To show a pervasive and unreasonable risk of constitutional injury, Younger must produce evidence that inmate assaults were "widespread, or at least used on several different occasions and that the conduct engaged in by the subordinates poses an unreasonable risk of harm of constitutional injury." *Id.* To satisfy the second element, Younger may prevail "by demonstrating a supervisor's continued inaction in the face of documented widespread abuses." *Id.* To meet the third element, Younger must present "direct" proof of causation "where the policy commands the injury of which plaintiff complains . . . or may be supplied by the tort principle that holds a person liable for the natural consequences of his actions." *Id.* Ultimately, the issue of supervisory liability "is ordinarily one of fact, not law." *Shaw*, 13 F.3d at 799.

Crowder seeks summary judgment on all of Younger's § 1983 claims, arguing that there is "no

admissible evidence" that Crowder knew of "widespread and pervasive premeditated and retaliatory attacks by MRDCC staff on inmates" or was "deliberately indifferent to Younger's medical needs or to false charges asserted against him."[5] (Crowder Mot. 17-21, ECF No. 185-1.)

A. Younger must show "subjective deliberate indifference."

As a preliminary matter, Younger argues that he need not show "subjective deliberate indifference" to sustain a claim of supervisory liability against Crowder because he was a pretrial detainee, not a prisoner. Younger is correct that pre-trial detainees need not show that their assailants had a particular subjective state of mind when using excessive force. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472-73 (2015). Supervisory liability, however, *always* requires a showing of deliberate indifference on the part of the supervisor. *See, e.g.*, *Thompson v. Friday*, JKB-18-2186, 2019 WL 6528975, at *4 (D. Md. Dec. 4, 2019) (applying traditional supervisory liability framework to claim against supervisor for subordinates' use of excessive force against pre-trial detainee); *Ozah v. Fretwell*, CCB-18-1063, 2019 WL 4060387, at *8-9 (D. Md. Aug. 28, 2019) (applying "deliberate indifference" state of mind requirement in pre-trial detainee case and collecting cases for support).

[5] Crowder also argues that there is no evidence that he was aware that Ramsey, Green, and Hanna would attack Younger on September 30, 2013. As this Court has previously held in this case (Mem. Op. 26, ECF No. 188), Younger need not demonstrate that Crowder was aware of a potential attack against Younger, but rather must show that Crowder was aware of a substantial risk of harm to those *like* Younger (*i.e.*, prisoners at MRDCC). *See Shaw*, 13 F.3d at 799.

B. Crowder's knowledge of widespread and pervasive assaults against inmates.

There is sufficient evidence in the record to raise a genuine dispute as to whether Crowder knew of widespread inmate abuses. Despite explicit warnings about Ramsey and Green's behavior from Hinton, Fisher, and Peré, there is no evidence that Crowder took any significant measures to prevent attacks on inmates. Although Assistant Warden Fisher, Chief of Security Presbury, and Captain Joyner all claimed to have been unaware of prior attacks against inmates conducted in retaliation for assaults against correctional officers, and expressed surprise that Ramsey, Green, and Hanna retaliated against Younger, Crowder read the numerous use of force reports bearing Ramsey and Green's name, heard warnings about Green from Hinton years before the assault, and listened to Peré's complaints about "unnecessary" uses of force. Hanna, moreover, has testified that he frequently participated in attacks against inmates and that misconduct "goes from the top down." At the summary judgment stage, this Court may not resolve the factual disputes generated by the testimony of Fisher, Hanna, Hinton, Joyner, Peré, and Presbury. It is for the jury to determine whether Crowder had actual or constructive knowledge of the threat facing MRDCC inmates and exhibited deliberate indifference to that threat.

C. Deliberate indifference to Younger's medical needs.

To prevail on his "medical needs" claim, Younger must demonstrate: "(1) the supervisory defendants failed promptly to provide [him] with needed medical care, (2) that the supervisory defendants deliberately interfered with the prison doctors' performance, or (3) that the

supervisory defendants tacitly authorized or were indifferent to the prison physicians' constitutional violations." *Barnes v. Wilson*, 110 F. Supp. 624, 631-32 (D. Md. 2015) (quoting *Miltier v. Beorn*, 896 F.2d 848, 854 (4th Cir. 1990)).

Younger has not adduced sufficient evidence to generate genuine disputes of material fact on this issue. Although there is evidence that Crowder's response to Younger's assault was deficient in many respects (*see* IIU 13-35-01359, ECF No. 195-3), it is undisputed that Younger was transported to the medical unit immediately after he sustained his injuries, albeit by his assailants. (Younger Dep. 94:6-11.) There is no evidence that Crowder deliberately interfered with Younger's medical procedures. Finally, Younger does not present evidence that Crowder was aware of a widespread, well documented lack of medical attention to inmates as supervisory liability ordinarily requires. Younger has failed to raise a genuine dispute of material fact with respect to this claim. Accordingly, Summary Judgment is granted in favor of Crowder on Younger's claim that Crowder is liable for exhibiting deliberate indifference to Younger's medical needs.

D. Deliberate Indifference to false charges against Younger.

Younger's claim that Crowder exhibited deliberate indifference to false charges brought against him is also unavailing because Younger has failed to show that the charges produced a constitutional deprivation. "An inmate has no constitutional right to be free from being falsely or wrongly accused of conduct." *Cooper v. Shearin*, JFM-10-3108, 2011 WL 6296799, at *3 (D. Md. Dec. 15, 2011). So long as an inmate is "granted a hearing, and had the opportunity to rebut the unfounded or false charges,"

the mere filing of a false charge against an inmate does not work a constitutional harm. *Id.* (quoting *Freeman v. Rideout*, 808 F.2d 949, 952-53 (2d Cir. 1986). There is no dispute that Younger was granted a hearing on the administrative charges brought against him. Younger provides no evidence to support his claim that he "could not call witnesses, present evidence, or rely on investigative documents" to present a defense at his administrative hearing. (Younger Resp. 11, ECF No. 195.) Moreover, there is no evidence that Crowder could have prevented Younger from facing these charges. Younger was not found guilty of these charges until October 21, 2013, two weeks after Crowder was removed from the Warden position. (Hearing Tr., Oct. 21, 2013, 25:9-14, ECF No. 207-3.) Accordingly, summary judgment is granted in favor of Crowder on Younger's claim that Crowder exhibited deliberate indifference to the filing of false charges against Younger.

In summary, Younger has raised a genuine dispute concerning Crowder's deliberate indifference to assaults against inmates, and may proceed to trial on that theory. Younger may not, however, proceed to trial on his theory that Crowder exhibited deliberate indifference to his medical needs or to false charges pursued against him.

VII. Qualified Immunity.

Crowder contends that he is shielded from liability as to Younger's § 1983 claims under the doctrine of qualified immunity. "Qualified immunity shields government officials from liability in a § 1983 suit as long as their conduct has not violated 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Humbert v. Mayor & City Council of Baltimore City*, 866 F.3d 546, 555 (4th Cir. 2017) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "To

determine whether an officer is entitled to qualified immunity, the court must examine (1) whether the facts illustrate that the officer violated the plaintiff's constitutional right . . . , and (2) whether the right was clearly established at the time of the alleged event such that 'a reasonable officer would have understood that his conduct violated the asserted right.' " *Id.* (quoting *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007)). "The answer to both questions must be in the affirmative to defeat the officer's entitlement to immunity." *Id.*

Seizing on a footnote from a Supreme Court opinion, Crowder argues that the law was not sufficiently clear so as to put him on notice that his actions—or inactions—were unconstitutional. *See Farmer v. Brennan*, 511 U.S. 825, 834 n.3, 114 S. Ct. 1970 (1994) (declining to resolve "at what point a risk of inmate assault becomes sufficiently substantial for Eighth Amendment purposes"). With this citation, Crowder appears to be arguing that officials can *never* be held liable under a supervisory liability theory because the Supreme Court has declined to precisely quantify when a risk of constitutional injury becomes sufficient to trigger liability.

Fourth Circuit precedent sufficiently notified Crowder that failing to take action to protect inmates from abuses at the hands of correctional officers could lead to supervisory liability under § 1983. The Fourth Circuit has recently affirmed that prisoners "have an Eighth Amendment right to be protected from malicious attacks, not just by other inmates, but also from the very officials tasked with ensuring their security" and that this right was clearly established as of April 2010. *Thompson v. Virginia*, 878 F.3d 89, 109 (4th Cir. 2017). Accordingly, qualified immunity cannot shield Crowder from Younger's claims.

CONCLUSION

For the foregoing reasons, Defendant Crowder's Motion for Summary Judgment (ECF No. 185) is GRANTED IN PART and DENIED IN PART. Specifically, Summary Judgment is ENTERED in Crowder's favor on Younger's claim that Crowder exhibited deliberate indifference to Younger's medical needs and the false charges entered against him, but is DENIED as to all other claims asserted against him. Defendant Dupree's Motion for Summary Judgment (ECF No. 186) and the Motion for Summary Judgment for all Claims in Amended Complaint against Defendant Wallace Singletary (ECF No. 187) are DENIED *in toto*.

A separate Order follows.

Dated: December 19, 2019

_____/s/_____
Richard D. Bennett
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER,	*	
Plaintiff,	*	
v.	*	Civil Action No. RDB-16-3269
JEMIAH L. GREEN, *et al.*,	*	
	*	
Defendants.	*	

* * * * * * * * *

MEMORANDUM OPINION

In the morning hours of September 30, 2013, Sergeant Kwasi Ramsey ("Ramsey"), Sergeant Jemiah Green ("Green"), and Correctional Officer Richard Hanna ("Hanna") of the Maryland Department of Public Safety & Correctional Services ("DPSCS") entered Plaintiff Kevin Younger's ("Plaintiff" or "Younger") prison cell in the Maryland Reception, Diagnostic & Classification Center ("MRDCC"). After evacuating his cellmate, the officers threw Younger from his top bunk to the concrete floor, bludgeoned him with handcuffs and other tools, and slammed his head against a toilet bowl. Ramsey, Hanna, and Green have been convicted of their crimes;[1] the acting

[1] On May 6, 2015, Hanna pled guilty to conspiracy to commit first degree assault. (Am. Compl. ¶ 94); *State v. Hanna*, Case No. 114260031 (Balt. City Cir. Ct), filed Sept. 17, 2014. On April 1, 2016, a jury convicted Ramsey and Green on charges of second-degree assault and misconduct in office. (Am. Compl. ¶ 95); *State v. Ramsey*, Case No. 114260032 (Balt. City Cir. Ct.), filed Sept. 17, 2014; *State v. Green*, Case No. 114260029 (Balt. City Cir. Ct.), filed Sept. 17, 2014.

Warden of MRDCC, Tyrone Crowder ("Crowder") has been removed from his post;[2] and a jury assembled in the Circuit Court for Baltimore City has found the State of Maryland liable for Younger's injuries.[3]

In this action, Younger pursues claims against his assailants (Defendants Ramsey, Green, and Hanna) and against the Division of Correction officials whom he contends are responsible—Warden Crowder, Major Wallace Singletary ("Singletary"), and Lieutenant Neil Dupree ("Dupree"). In his Amended Complaint (ECF No. 140), he alleges violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983, against Crowder, Dupree, and Singletary (Count One);[4] an identical claim asserted against Ramsey, Green, and Hanna (Count Two); Excessive Force, in violation of the Maryland Declaration of Rights, Article 24, against Ramsey, Green, and Hanna (Count Three);[5] violations of the Maryland Declaration of Rights, Article 24, against

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[2] (Am. Compl. ¶ 91.)

[3] *See Younger v. Maryland*, Case No. 24-C-17-004752 (Balt. City Cir. Ct.), filed Sept. 21, 2017.

[4] Specifically, Younger alleges violations of his "right to be free from the use of excessive and unreasonable force and seizure," "the right to be free from a deprivation of life and liberty without due process of law," "the right to be free from known risks of serious physical harm," the right to be free from deliberate indifference for a serious medical need," and "the right to be free from objectively unreasonable conduct that causes, or has the potential to cause, constitutional harm." *See* Am. Compl., ¶ 113, ECF No. 140.

[5] Articles 16, 24, and 25 of the Maryland Declaration of Rights are interpreted *in pari materia* with their federal counterparts, the Eighth and Fourteenth Amendments to the United States Constitution. *See, e.g., Evans v. State*, 396 Md. 256, 327, 914 A.2d 25 (2006); *Pitsenberger v. Pitsenberger*, 287 Md. 20, 27, 410 A.2d 1052 (1980).

Crowder, Dupree, and Singletary (Count Four); Battery against Ramsey, Green, and Hanna (Count Five); Intentional Infliction of Emotional Distress against Ramsey, Green, and Hanna (Count Six); Conspiracy against Ramsey, Green, and Hanna (Count Seven); Negligent Retention, Training, and Supervision against Crowder, Dupree, and Singletary (Count Eight); Negligence against Crowder, Dupree, and Singletary (Count Nine).

Now pending before this Court are a Motion to Dismiss all Claims in the Amended Complaint Against Defendant Tyrone Crowder (ECF No. 154); a Motion to Dismiss all Claims in Amended Complaint Against Defendant Wallace Singletary (ECF No. 155); and Defendant Dupree's Motion to Dismiss (ECF No. 156). The parties' Motions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2018). For the reasons stated herein, all three Motions (ECF Nos. 154, 155, and 156) are DENIED.

BACKGROUND

In ruling on the pending motions to dismiss, the factual allegations in the plaintiff's complaint must be accepted as true and those facts must be construed in the light most favorable to the plaintiff. *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 208 (4th Cir. 2017) (citing *SD3, LLC v. Black & Decker (U.S.), Inc.*, 801 F.3d 412, 422 (4th Cir. 2015)). This Court may also consider documents attached to a motion to dismiss so long as they are "integral to the complaint and authentic." *Thompson v. United States*, RDB-15-2181, 2016 WL 2649931, at *2

n.4 (D. Md. May 10, 2016), *aff'd* 670 F. App'x 781 (4th Cir. 2016) (citation omitted).[6]

I. Younger's Assault by Ramsey, Green, and Hanna.

On September 29, 2013, Younger witnessed a fight between two inmates and a correctional officer. (*Id.* ¶ 22.) During the fight, the correctional officer was seriously injured. (*Id.*) Subsequently, the two inmates who participated in the confrontation were transferred from the general housing unit and placed in various cells in MRDCC. (*Id.* ¶ 24.) Younger and at least two other prisoners were also transferred from the general housing unit to other cells. (*Id.* ¶ 25.) In particular, Younger was placed in the "5 Dormitory" with another individual. (*Id.* ¶ 26.)

On September 30, 2013 at approximately 6:30 a.m., Officer Hanna arrived at MRDCC, cleared the security checkpoint, and climbed the stairs toward the roll call room. (*Id.* ¶ 27.) Ramsey was waiting at the top of the stairs. (*Id.*) When they met, Ramsey informed Hanna that "they had some business to handle" and that he "sought to exact revenge on the prisoners he and other supervisory staff believed to be involved" in the prior day's altercation. (*Id.*) These prisoners and their cell locations were identified on a list in Ramsey's possession. (*Id.* ¶ 28.) At some point, Green joined Hanna and Ramsey and the three officers proceeded to the armory. (*Id.*) Inside, Ramsey obtained handcuffs and a large mace canister. (*Id.*) Upon exiting, the armory control officer did not require Ramsey to sign the logbook as was required. (*Id.*) From the armory, Ramsey, Green, and Hanna

[6] This Court has previously addressed the facts of this case in a prior Memorandum Opinion. (ECF No. 72.) This Memorandum Opinion presents a new background in light of new allegations contained in the Amended Complaint. (ECF No. 140.)

proceeded to the elevator to the seventh-floor housing unit. (*Id.*)

The three officers then "systematically moved about MRDCC to each of the five prisoners' cells, brutally assaulting and beating each of the prisoners, including Mr. Younger." (*Id.* ¶ 29.) Between 6:40 and 7:00 a.m., Ramsey, Green, and Hanna entered Younger's cell, "grabbing Mr. Younger by his shirt and legs, and throwing him from the top bunk onto the concrete floor." (*Id.* ¶¶ 30-33.) "Ramsey, Green, and Hanna proceeded to attack Mr. Younger, striking him on the head, face, and body, with handcuffs, radios, and keys, and slamming his head against the toilet bowl in the cell," all the while verbally abusing him. (*Id.* ¶ 34.) They also "kicked and stomped" on Younger as he lay helpless. (*Id.* ¶ 35.) As a result of the beating, "Mr. Younger's cell was covered in blood, and Mr. Younger was bleeding profusely from his head and face." (*Id.* ¶ 37.)

Younger did not receive medical treatment immediately following his assault. Ramsey, Green, and Hanna left him "in a pool of blood on the concrete floor of his cell, having difficulty breathing, without medical care or attention." (*Id.* ¶ 38.) After the three officers assaulted the prisoners on Ramsey's list, they returned to the second floor and stood outside of the roll call room. (*Id.* ¶ 43.) With this positioning, the officers ensured that they would be able to escort the prisoner victims to the medical unit. (*Id.*)

During roll call that morning, Lieutenant Neil Dupree and Major Wallace Singletary displayed photographs of the injured correctional officers and the inmates who they believed were involved in the altercation on the previous day. (*Id.* ¶¶ 49, 50.) Dupree and Singletary also circulated pictures of the five prisoners

who were removed from the general housing unit following the September 29, 2013 fight—including Younger—and represented that these prisoners were responsible for the altercation. (*Id.* ¶¶ 51, 52.)

Between 8:00 and 8:30 a.m., medical alerts began to sound for each of the five prisoners attacked by Ramsey, Green, and Hanna. (*Id.* ¶ 55.) A tier officer eventually discovered Younger. (*Id.* ¶ 44.) In the company of other officers, Green pushed Younger in a wheelchair toward the medical unit. (*Id.* ¶¶ 45, 46.) When Dupree arrived in response to the medial alerts, he observed correctional officers bringing Younger down the stairs toward the medical unit and asked Ramsey what had happened. (*Id.* ¶ 57.) Ramsey claimed that Younger had "fell," and Dupree allegedly "accepted this explanation, despite Mr. Younger's injuries being markedly inconsistent with the asserted explanation, even to a medically untrained eye." (*Id.* ¶ 58.) Dupree allegedly failed to seek emergency attention, launch an investigation into Younger's injuries, or interview Younger and his cellmate. (*Id.* ¶¶ 60, 61, 62.) In the medical unit, Green brought Younger an Incident Report form and a pen. (*Id.* ¶ 46.) Green then ordered Younger "to note that he sustained his injuries by falling from his bunk bed." (*Id.*) After receiving some medical care that morning, Younger was returned to his cell by Green and Ramsey. (*Id.*)

During the afternoon roll call that day, Warden Crowder chastised the correctional officers involved in the altercation of September 29, 2013. (*Id.* ¶ 53.) He criticized the officers for being "soft" and told them that they "should had [sic] beat the inmates" who were allegedly involved in the fight. (*Id.*) That evening, Crowder entered Younger's cell, where he was cowering in fear underneath of his bunkbed. (*Id.* ¶ 66.) Younger told Crowder that he had been beaten and that he had helped

the correctional officer who had been injured on September 29. (*Id.* ¶ 68.) During their discussion, Crowder indicated that prison leadership was aware that he had assisted the officer and assured Younger that he would be moved to another cell block. (*Id.*) Younger was relocated that evening. (*Id.*) On October 1, 2013, Younger sought and obtained medical assistance by advising the chief of security about his attack. (*Id.* ¶ 70.)

Although prison leadership was aware that Younger had assisted the injured officer on September 29, 2013, Younger nevertheless faced administrative charges. (*Id.* ¶ 71.) During his disciplinary hearing, he was not permitted to call witnesses or present evidence. (*Id.* ¶ 72.) Younger was physically incapable of presenting a defense during the hearing because he was still recovering from his injuries. (*Id.*) As punishment for the charges, Plaintiff was sentenced to 120 days (four months) in solitary confinement, during which time he could not access full medical services. (*Id.* ¶¶ 72, 76.) On October 24, 2013, Plaintiff was criminally charged with second degree assault for his alleged involvement in the same September 29, 2013 incident. (*Id.* ¶ 73.) The State later dismissed these charges. (*Id.* ¶ 93.)

II. Widespread, Documented Inmate Abuse at the Maryland Reception, Diagnostic & Classification Center.

Younger alleges that his assault took place in the context of civil rights abuses and "vigilante justice" fostered by Defendants Crowder, Singletary, and Dupree at MRDCC. (Am. Compl. ¶¶ 13, 14, 21, ECF No. 140.) This culture manifested in frequent inmate abuses and disregard for prison protocol. Officers allegedly utilized a special call code on their MRDCC radios to signal a "select group of first responders who would dole out

extrajudicial punishment on prisoners with whom they had an issue." (*Id.* ¶ 14.) The officers allegedly did not fear punishment for their actions, instead "believ[ing] that they could improperly assault prisoners and then cover up those incidents with impunity." (*Id.* ¶ 21.) The staff at MRDCC also disregarded annual in-service trainings, which some supervisory personnel considered "a joke" and "a waste of . . . time." (*Id.* ¶ 20.)

Younger alleges that Crowder, Dupree, and Singletary were aware that Ramsey, Green, and Hanna had been suspected of use-of-force abuses long before Younger's assault. Younger claims that Crowder, Dupree, and Singletary knew that Green and Ramsey had been the subject of "active criminal assault investigations, and numerous excessive use of force investigations, some of which were sustained." (*Id.* ¶¶ 96, 97.) He further alleges that Crowder, Dupree, and Singletary were aware that Hanna had "been involved in previous use of force complaints and investigations." (*Id.* ¶ 98.)

Crowder, in particular, allegedly ignored repeated warnings about Green and Ramsey from MRDCC staff. In September 2012, the assistant warden at MRDCC notified Crowder "that she was concerned about seeing the same officers' names, including Green and Ramsey, appearing in use of force reports." (*Id.* ¶ 17.) When Crowder attempted to rationalize Green and Ramsey's behavior as the work of "first responders to fluid situations," the assistant warden pressed: she noted that the officers were "previously suspended for this conduct and suspensions indicate a real problem." (*Id.*) In May 2013, the investigative captain approached Crowder and recommended additional use of force training, noting that Ramsey and Green had repeatedly appeared in use of force incident reports. (*Id.* ¶ 18.) When Crowder refused to respond, the investigative captain conducted

impromptu use of force training for these officers. (*Id.*) In July 2013, the investigative captain told Crowder that Green should receive a disciplinary sanction for his involvement in another use of force complaint, complaining "that other involved officers lied to cover for Green and that foreclosed any ability to discipline Green." (*Id.* ¶ 19.)

The nature of Dupree's job ensured that he was exposed to information about Ramsey, Green, and Hanna's misconduct. Dupree was required to prepare a "Scrutinized/Compromised Staff Report" for DPSCS headquarters. (*Id.* ¶ 100.) The report listed all correctional staff at MRDCC who were under investigation or were suspected of violating prison policies and protocols. (*Id.*) While preparing the report, Dupree would "synthesize information" concerning staff misconduct and review a draft with the warden before finalizing it. (*Id.*) Younger alleges that the names of Ramsey, Green, and Hanna were contained in the Report. (*Id.*)

Dupree also personally assisted Ramsey, Green, and Hanna with their retributory assaults. (*Id.* ¶ 101.) Dupree frequently forwarded staff complaints about prisoners to the trio, who would respond with violence. (*Id.*) Dupree was allegedly aware that Ramsey, Green, and Hanna would abuse inmates after he forwarded them information of this kind and that the medical staff were complicit in their activities, but did nothing to stop them. (*Id.*)

Finally, Younger alleges that Singletary had knowledge of Ramsey, Green, and Hanna's misconduct but did not attempt to prevent it. (*Id.* ¶ 103.) For example, Singletary was allegedly present when Ramsey, Green, and Hanna beat a prisoner who was shackled in a three-point restraint. (*Id.*) Singletary also allegedly knew that Ramsey, Green, and Hanna would leave prisoners in the

showers for hours at a time. (*Id.*) Although Singletary was their most senior supervisory, he allegedly failed to report these incidents. (*Id.*)

III. Criminal and Civil Proceedings.

Following Younger's assault, prison staff were subject to administrative and criminal investigations. On October 1, 2013, the Intelligence and Investigative Division of the Maryland Department of Public Safety and Correctional Services ("DPSCS") launched an investigation following the assault of Younger and other prisoners. (*Id.* ¶ 87.) The investigation concluded that on the morning of September 30, 2013, Ramsey, Green, and Hanna assaulted five prisoners, including Younger, whom they believed were involved in the fight on the previous evening. (*Id.* ¶ 88.) The investigation also concluded that Crowder failed to take appropriate steps following the September 29, 2013 assault and "did not ensure the safety of the five inmates and . . . failed to instruct staff to check the welfare of the five named inmates in the assault." (*Id.* ¶ 90.) On October 7, 2013, the State demoted Crowder and placed him on administrative leave. (*Id.* ¶ 91.)

On September 17, 2014, Ramsey, Green, and Hanna were criminally indicted for their assault of the five prisoners.[7] (*Id.* ¶ 92.) Prior to the indictments, Younger provided testimony to secure Green, Ramsey, and Hanna's convictions. (*Id.* ¶ 93.) On May 6, 2015 Hanna pled guilty to conspiracy to commit first degree assault. (*Id.* ¶ 94.) On April 1, 2016, a jury found Green and

[7] *See State v. Hanna*, Case No. 114260031 (Balt. City Cir. Ct), filed Sept. 17, 2014; *State v. Ramsey*, Case No. 114260032 (Balt. City Cir. Ct.), filed Sept. 17, 2014; *State v. Green*, Case No. 114260029 (Balt. City Cir. Ct.), filed Sept. 17, 2014.

Ramsey guilty of second degree assault and misconduct in office. (*Id.* ¶ 95.)

On September 28, 2016, Younger filed suit in this Court against the State of Maryland, Stephen T. Moyer, the then-acting Secretary of the Maryland Department Public Safety & Correctional Services, Stephen T. Moyer, the former MRDCC Warden Tyrone Cowder; Pamela Dixon, Wallace Singletary, Neil Dupree, Jemiah Green, Richard Hanna, Kwasi and Ramsey. (ECF No. 1.) In a Memorandum Opinion issued on August 22, 2017, this Court dismissed all claims asserted against the State of Maryland and Stephen T. Moyer in his official capacity on sovereign immunity grounds. (Mem. Op. 9-10, ECF No. 72.) This Court also dismissed Younger's *individual* capacity claims against Moyer failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (*Id.* at 10-13.)

Subsequently, in September 2017, Younger filed suit against the State of Maryland in the Circuit Court for Baltimore City, Case No. 24-C-17-004752. (Case Information, ECF No. 154-4.) While the State case proceeded, this Court stayed the Scheduling Order to facilitate settlement negotiations. (ECF No. 96.) In May 2019, Younger was granted leave to file an Amended Complaint in the State action. (*Id.* at 14.) In his Amended Complaint, Younger asserted three claims against the State of Maryland: Excessive Force in Violation of the Maryland Declaration of Rights, Article 24 (Count I), Cruel and Unusual Punishment in Violation of the Maryland Declaration of Rights, Article 16 and 25 (Count II), and Negligent Hiring, Training, and Supervision (Count III). (Am. Compl. ¶¶ 98-141, ECF No. 154-3.) The case was submitted to a jury, which found in favor of Younger and awarded him $2,700,000.00. (Verdict Sheet,

ECF No. 154-5.) Specifically, the jury answered the following two questions affirmatively:

> 1. Do you find by a preponderance of the evidence that the Defendant, State of Maryland, violated the Plaintiff, Kevin Younger's rights under the Maryland Declaration of Rights, and that this violation was a proximate cause of Kevin Younger's injuries?
>
> 2. Do you find by a preponderance of the evidence that the Defendant, State of Maryland, negligently supervised, trained, or retained its correctional staff at MRDCC, and that this negligence was a proximate cause of the Plaintiff, Kevin Younger's injuries?

(*Id.*) On Motion by the State, the Circuit Court reduced the judgment to $200,000.00, the maximum amount recoverable under the Maryland Tort Claims Act. (ECF No. 154-4 at 19-20.) The State appealed the Judgment on August 2, 2019. (*Id.* at 20.)

On June 18, 2019, this Court lifted the Stay in this matter. (ECF No. 128.) On July 30, 2019, Younger filed an Amended Complaint. (ECF No. 140.) In response, the presently pending motions to dismiss were filed: a Motion to Dismiss all Claims in the Amended Complaint Against Defendant Tyrone Crowder (ECF No. 154); a Motion to Dismiss all Claims in Amended Complaint Against Defendant Wallace Singletary (ECF No. 155); and Defendant Dupree's Motion to Dismiss (ECF No. 156).

STANDARD OF REVIEW

Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the dismissal of a complaint if it fails to state a claim upon which relief

can be granted. The purpose of Rule 12(b)(6) is "to test the sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006). The United States Supreme Court's recent opinions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), "require that complaints in civil actions be alleged with greater specificity than previously was required." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (citation omitted). In *Twombly*, the Supreme Court articulated "[t]wo working principles" that courts must employ when ruling on Rule 12(b)(6) motions to dismiss. *Iqbal*, 556 U.S. at 678. First, while a court must accept as true all the factual allegations contained in the complaint, legal conclusions drawn from those facts are not afforded such deference. *Id.* (stating that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to plead a claim); *see also Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) ("Although we are constrained to take the facts in the light most favorable to the plaintiff, we need not accept legal conclusions couched as facts or unwarranted inferences, unreasonable conclusions, or arguments." (internal quotation marks omitted)). Second, a complaint must be dismissed if it does not allege "a plausible claim for relief." *Iqbal*, 556 U.S. at 679.

ANALYSIS

I. The doctrine of *res judicata* does not bar Younger's claims.

All Defendants argue that the doctrine of *res judicata* bars the claims asserted against them.[8] To determine the preclusive effect of Younger's favorable state court judgment, this Court applies Maryland law. *See Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 162 (4th Cir. 2008) (holding that the "preclusive effect of a judgment rendered in state court is determined by the law of the state in which the judgment was rendered"). In Maryland, *res judicata* "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter, and the causes of action are identical or substantially identical as to issues actually litigated and as to those which *could have or should have been raised in the previous litigation*." *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 140, 43 A.3d 999 (2012) (quoting *R&D 2001, LLC v. Rice*, 402 Md. 648, 663, 938 A.2d 839 (2008) (emphasis added)). The doctrine "avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 106, 887 A.2d 1029 (2005) (citation omitted). Maryland courts often describe the doctrine as consisting of the following three elements: "(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in

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[8] Although *res judicata* is an affirmative defense, it may be asserted upon a Rule 12(b)(6) motion when the defense "clearly appears on the face of the complaint." *Andrews v. Daw*, 201 F.3d 521, 524 n.1 (4th Cir. 2000) (quoting *Richmond v. Fredericksburg & Potomac R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993)).

the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation." *Bank of New York Mellon v. Georg*, 456 Md. 616, 678, 175 A.3d 720 (2017) (quoting *Powell v. Breslin*, 430 Md. 52, 64-64, 59 A.3d 531 (2013)).

The parties agree that there has been a final judgment on the merits. (Pl.'s Resp. 22, ECF No. 166.) Plaintiff argues that *res judicata* does not apply in this action because the Defendants are not in privity with the State of Maryland—the Defendant in the State case. There is no dispute that this case involves different defendants than those sued in State court. In the State action, Younger sued only the State of Maryland. In this action, Younger sues the State of Maryland's employees who were allegedly responsible for his injuries. This Court need only consider whether the employee-defendants sued in this action are in privity with the State for purposes of Maryland's doctrine of *res judicata*. They are not. Under Maryland law, plaintiffs may maintain the same cause of action against employees and employers in separate suits, so long as the separate suits require the adjudication of separate defenses. In such circumstances, the Maryland courts do not consider the employer and employee in privity for purposes of *res judicata*. In this case, the State of Maryland presented an immunity defense in federal court which required Younger to bring claims against it in State court, while maintaining a separate action in federal court against the State employees. Under these circumstances, the doctrine does not apply.

In the *res judicata* context, privity "generally involves a person so identified in interest with another that he represents the same legal right." *FWB Bank v. Richman*, 354 Md. 472, 498 (1999). In determining

whether parties are the same or are in privity with one another for purposes of *res judicata*, Maryland courts look to *The Restatement (Second) of Judgments* § 51 (1982). *See Prince George's Cty. v. Brent*, 414 Md. 334, 343, 995 A.2d 672 (2010) (quoting *The Restatement (Second) of Judgments* § 51 (1982)). Section 51 reads, in relevant part, as follows:

> Persons Having a Relationship in Which One is Vicariously Responsible for the Conduct of the Other
>
> If two persons have a relationship such that one of them is vicariously responsible for the conduct of the other, and an action is brought by the injured person against one of them, the judgment in the action has the following preclusive effects against the injured person in a subsequent action against the other.
>
> (1) A judgment against the injured person that bars him from reasserting his claim against the defendant in the first action extinguishes any claim he has against the other person responsible for the conduct unless:
>
> > (a) The claim asserted in the second action is based upon grounds that could not have been asserted against the defendant in the first action; or
> >
> > (b) The judgment in the first action was based on a defense that was personal to the defendant in the first action.
>
> (2) A judgment in favor of the injured person is conclusive upon him as to the amount of his damages, unless:
>
> > . . .
> >
> > (b) Different rules govern the measure of damages in the two actions.

The Restatement (Second) of Judgments § 51.

In general, Maryland law "recognizes that a principal and his agent are in privity." *Kutzik v. Young*, 730 F.2d 149, 152 (4th Cir. 1984) (citing *McKinzie v. Baltimore & Ohio R.R.*, 28 Md. 161 (1868)); *see also Savary v. Cody Towing & Recovery, Inc.*, DKC-10-2159, 2011 WL 337345, at *3-4 (D. Md. Jan. 31, 2011) (holding that financing company and its authorized agent, a towing company charged with repossessing an all-terrain vehicle from a customer, were in privity for purposes of *res judicata*). Employers and employees are also in privity for purposes of this doctrine, so long as they cannot invoke separate defenses. *See deLeon v. Slear*, 328 Md. 569, 586-88, 616 A.2d 380 (1992) (finding that employer and employees were in privity in separately-maintained defamation suits because the defense of conditional privilege, asserted in the prior action, "would seem to be fully applicable" to defendants in the subsequent suit).

In *Prince George's Cty. v. Brent*, 414 Md. 334 (2010), the Maryland Court of Appeals determined that a prior judgment against a government entity does not preclude the same plaintiff from asserting the same claim against the entity's employee, so long as the separate suits present separate defenses unique to the defendants. 414 Md. at 342-49. *Brent* arose from an automobile accident between Officer Michael W. Daily of the Prince George's County Police Department and the Plaintiff, Cleveland Brent. *Id* at 336. In the first action (*Brent I*), Brent filed a negligence claim against Prince George's County and obtained a jury verdict in the amount of $320,000.00. *Id.* The judgment was subsequently reduced to $20,000.00 pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-524, which creates a limited waiver of sovereign immunity and governmental immunity "to the extent of benefits provided by the security accepted by the Motor Vehicle

Administration." *Id.* The $20,000.00 figure corresponded to the "security accepted by the Motor Vehicle Administration" per person per accident under Md. Code Ann. Transp. § 17-103(b)(1). *Id.*

In the second action (*Brent II*), Brent attempted to circumvent the effects of the County's governmental immunity and the reduction of judgment effectuated by § 5-524 by filing suit directly against Officer Daily. *Id.* at 338. In *Brent II*, Officer Daily asserted an immunity defense based on Md. Code Ann., Cts. & Jud. Proc. § 5-639(b)(1), which provides immunity to "operator[s] of an emergency vehicle . . . while operating the emergency vehicle in the performance of an emergency service." *Brent*, 414 Md. at 338. The case was submitted to a jury, which was charged with resolving the sole issue of whether Officer Daily was operating his vehicle "in the performance of an emergency service." *Id.* at 338-39. The jury answered that question in the negative. *Id.* Per the parties' agreement, judgment was entered in favor of *Brent* for $200,000.00, against which the $20,000.00 paid by the County was credited. *Id.* at 339-40. Asserting *res judicata*, the County appealed the judgment to the Maryland Court of Special Appeals, and subsequently, to the Maryland Court of Appeals. *Id.* at 340.

The Court of Appeals determined that *res judicata* did not apply, holding that master and servant are not "privies" for the purpose of the *res judicata* doctrine. *Id.* at 342, 349. More broadly, *Brent* held that a tort plaintiff may sue only the employer or employee, obtain a judgment, and then sue the remaining defendant. *Brent*, 414 Md. at 345. The Court reasoned that a tort plaintiff "is not required to join both [the employer and employee] and may decide to bring suit in the first instance against only of them" and that "one of the obligors may be immune to suit while the other is not." *Id.* at 343 (quoting

Restatement (Second) of Judgments § 51 cmt. a (1982)). For these reasons, a lawsuit maintained against an employer may present separate claims, ill-suited for the application of *res judicata*. *Id.* at 343. So long as the claim has not been satisfied, the plaintiff is permitted to pursue it.

Applying Maryland law and *The Restatement (Second) of Judgments* § 51, this Court has likewise held that a defendant-employer and defendant-employee are not in privity for purposes of *res judicata* when the two are able to assert separate defenses. *See Church v. Maryland*, 180 F. Supp. 2d 708, 752 (D. Md. 2002). In *Church*, an employee, Rita M. Church, filed suit against a coworker for sexual harassment in State court. 180 F. Supp. 2d at 746-47. The State court dismissed the claim with prejudice, holding that a Title VII action cannot lie against an individual. *Id.* Subsequently, the plaintiff filed suit against her employer in federal court. The employer asserted a *res judicata* defense, arguing that Church's employer and her co-worker were in privity for purposes of the doctrine. *Id.* at 746-47. This Court rejected that contention, finding that "both exceptions" presented in *The Restatement (Second) of Judgments* § 51 applied because the plaintiff could only pursue her Title VII claim against her employer and that her coworker had a unique defense in the prior action—the inapplicability of Title VII—which the employer could not assert in the second suit. *Id.* at 752.

The Defendants in this case—Ramsey, Green, Hanna, Crowder, Dupree, and Singletary—are not in privity with the State of Maryland for purposes of *res judicata* because the judgment obtained against the State of Maryland in the State court action was "based on based on a defense that was personal to the defendant in the first action." *The Restatement (Second) of Judgments* § 51

(1982). *Brent* and *Church* mandate this conclusion. As in *Brent*, Younger has obtained a favorable judgment and damages award against a government entity which was subsequently reduced as a result of a limited waiver of immunity. Just as Brent was permitted to sue the employee responsible for his injuries, Younger may now resume his suit against the government's employees in their individual capacities. As in *Brent*, the individual Defendants will assert defenses unavailable in the State action, including the defense of qualified immunity. The availability of unique defenses to these defendants indicates that the State of Maryland and its employees' interest are not so aligned as to render them "the same" or "in privity" for purposes of *res judicata*. Additionally, this action presents new issues unresolved in State court and the prospect of an independent damages award. Accordingly, Younger may pursue this action. *Brent* explicitly condones this outcome—it broadly permits tort plaintiffs to sue an employer, then pursue an employee so long as the asserted claims remain unsatisfied. That is the situation here (*see* ECF No. 166 at 27), and so Younger's case will proceed.

This case also resembles the situation in *Church*, in which an employee was permitted to file a suit against her employer after her sexual harassment claims against her coworker were dismissed. In this case, Younger's claims against his employer were dismissed by this Court, prompting him to sue in State court, where his jury award was dramatically reduced based on the State's sovereign immunity defense. Just as Church was afforded an opportunity to pursue her claims against her employer despite an unfavorable adjudication in the prior action, so too must Younger be permitted to sue the employees allegedly responsible for causing him harm despite the

dramatic reduction in the jury's damage award in the State action.

II. The Maryland Tort Claims Act does not bar Younger's state-law claims.

Defendants argue, as they did previously in this case, that they are immune to Younger's state claims because Younger has failed to allege that they acted with malice or gross negligence as is required by the Maryland Tort Claims Act. Alternatively, Defendants argue that Younger is estopped from alleging that the defendants have acted with malice or gross negligence because Younger's action against the State of Maryland required him to demonstrate that the Defendants acted without malice or gross negligence. Neither of these contentions are availing. Younger's Amended Complaint sufficiently alleges that Crowder, Dupree, and Singletary each condoned or intentionally failed to prevent widespread abuses against inmates, including the harm meted out against Younger.

The MTCA offers "a limited waiver of sovereign immunity" and "is the sole means by which the State of Maryland may be sued in tort." *Paulone v. City of Frederick*, 718 F. Supp. 2d 626, 637 (D. Md. 2010) (citation omitted). The State's immunity is not waived for the tortious acts or omissions of state personnel that fall outside of the scope of their public duties or are committed with malice or gross negligence. Cts & Jud. Proc. § 5-522(b). Likewise, "Maryland officials are granted immunity under the Maryland Tort Claims Act . . . for [tortious acts or omissions] committed within the scope of their duties when the violations are made 'without malice or gross negligence.'" *Housley v. Holquist*, 879 F. Supp. 2d 472, 482–83 (D. Md. 2011) (quoting *Lee v. Cline*, 863 A.2d 297, 304 (Md. 2004)). In

this context, "malice" means "actual malice" or "conduct 'characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud.'" *Lee v. Cline*, 384 Md. 245, 268, 863 A.2d 297, 311 (2004). "[A]n officer's actions are grossly negligent 'when they are 'so heedless and incautious as necessarily to be deemed unlawful and wanton, manifesting such a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances so as to furnish evidence of indifference to consequences.'" *Housley v. Holquist*, 879 F. Supp. 2d 472, 482-83 (D. Md. 2011) (quoting *Henry v. Purnell*, 652 F.3d 524, 536 (4th Cir. 2011)). The Fourth Circuit has made clear that "[w]hether an officer's actions are grossly negligent, and therefore unprotected by statutory immunity, is generally a question for the jury." *Henry*, 652 F.3d at 536 (citing *Taylor v. Harford County Dep't of Soc. Servs.*, 862 A.2d 1026, 1034 (Md. 2004)).

Defendants' argument that Younger has failed to allege malice or gross negligence is meritless. This Court previously rejected these arguments. (Mem. Op. 17-19, 23-24, ECF No. 72.) The Amended Complaint's slight adjustments to Younger's factual allegations have little effect on this Court's analysis. Younger has at the very least alleged that the Defendants acted with gross negligence by intentionally failing to perform their most basic duties with reckless disregard for the consequences to Younger's safety. The Complaint both generally alleges that Crowder, Dupree, and Singletary sanctioned and encouraged an environment which perpetuated widespread inmate abuse and cites specific incidents in which the three abandoned their responsibilities to the detriment of MRDCC inmates. For example, Crowder is alleged to have ignored explicit, repeated complaints about Ramsey and Green, and to have expressly

encouraged officers to abuse inmates. (Am. Compl. ¶¶ 17-19, 53.) Dupree is alleged to have prepared reports which made him aware of Ramsey, Green, and Hanna's conduct but nevertheless continued to forward complaints about inmates to these three individuals, thereby ensuring further abuse. (*Id.* ¶¶ 100, 101.) Singletary is alleged to have witnessed Ramsey, Green, and Hanna abuse inmates—including the assault of an inmate confined by a three-point restraint—and failed to take any action to stop these abuses. (*Id.* ¶ 103.) Although the factual allegations with respect to Crowder have changed—he is no longer alleged to have shown photographs of Younger and other inmates during roll call—these minor alterations have little bearing on the analysis. The totality of the Amended Complaint clearly alleges that Crowder, Dupree, and Singletary behaved in an unlawful and wanton manner and are not shielded by the MTCA.[9]

Contrary to the Defendants' assertions, judicial estoppel does not foreclose Younger from alleging that Crowder, Dupree, and Singletary acted with gross negligence. The doctrine of judicial estoppel prevents a party from adopting a position inconsistent with a position taken in prior litigation. *Zinkand v. Brown*, 478 F.3d 634, 638 (4th Cir. 2007). The purpose of judicial estoppel is to prevent litigants from "playing fast and loose with the courts, and to protect the essential integrity of the judicial process." *Lowery v. Stovall*, 92 F.3d 219, 223 (4th Cir. 1996) (*John S. Clark Co. v. Faggert & Frieden, P.C.*, 65 F.3d 26, 28-29 (4th Cir. 1995)). For judicial estoppel to bar Younger's claims, Defendants must establish that (1)

[9] Curiously, Younger has withdrawn his gross negligence cause of action and now brings only a garden-variety negligence claim (Count Nine) against Crowder, Dupree, and Singletary. Despite this change, dismissal is not warranted because Younger has sufficiently alleged that the Defendants acted with gross negligence.

Younger's positions are inconsistent, (2) Younger's prior inconsistent position must have been accepted by the tribunal in the prior proceedings, and (3) Younger must have acted in bad faith, intentionally misleading either court to gain an unfair advantage. *Zinkand*, 478 F.3d at 638.

Defendants maintain that, in order to prevail in the State action, Younger had to show that the "actionable conduct" was committed within the scope of the State officials' public duties and without malice or gross negligence. *See* Md. Code Ann., State Gov't § 12-104(b). Defendants argue that this case and the State action are based on the same "actionable conduct" and, accordingly, Younger cannot now sue the individual defendants for acting with gross negligence. The record reflects, however, that the State court had a different conception of the prior action. As the Honorable Julie R. Rubin remarked:

> Here the theory doesn't rest on persuading the jury or me first that, for example, Sergeant Ramsey or Officer Hannah [sic] acted within or acted negligently. I think it somewhat kind of turns it on its head and says, yeah, these folks acted deliberately, intentionally to hurt this man. . . . And that was within the scope of their duties because the State's purpose in how it managed that facility was with an eye toward intentionally injuring individuals in Mr. Younger's position.
>
> And so it's sort of an – puts me in a curious position because the theory of the case isn't that the jury should hold the State liable because these guys acted negligently. The theory is that the State is a participant.

(Trial Tr. (June 10, 2019) 127:9-23, ECF No. 161-4.)

From these remarks, it is apparent that the "actionable conduct" in the State case differs significantly from the "actionable conduct" presented in this case. Specifically, it appears from Judge Rubin's remarks that the that the actions of the State itself—as distinguished from the allegations complained of in this case—were at issue in State court. Accordingly, Younger may allege that the Defendants acted with gross negligence in this action despite prevailing against the State in the prior action.

III. Younger has stated a claim under 42 U.S.C. § 1983.

Defendants argue that Plaintiff has failed to state a claim under 42 U.S.C. § 1983. This Court has previously rejected this argument on the force of the allegations presented in the Original Complaint. (Mem. Op. 14-16, 20-22, ECF No. 72.) Although those factual allegations have changed slightly, this Court discerns no basis for departing from its prior holding.

As explained in this Court's prior Memorandum Opinion, Younger has undoubtedly alleged a violation of his rights. "There is no serious dispute that [Younger] was beaten by correctional officers Kwasi Ramsey, Jemiah Green, and Richard Hanna in retaliation" for the assault on a correctional officer. (State Def. Mot. 3, ECF No. 46-1.) Although Younger does not allege that the Defendants *personally* assaulted him, he has stated a claim for "supervisory liability" under 42 U.S.C. § 1983. As this Court has previously explained, *Young-Bey v. B.A. Daddysboy, Cos*, et al., No. JFM-15-3642, 2017 WL 3475667, at *6 (D. Md. Aug. 10, 2017), "[i]t is well established that the doctrine of *respondeat superior* does not apply in § 1983 claims." (citing *Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004)). However, "[l]iability of supervisory officials 'is not based on ordinary principles of *respondeat superior*, but rather is premised on a

recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.'" *Id.* (quoting *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir. 2001)). "Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." *Id.* (citing *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994)).[10]

In this case, Younger has sufficiently alleged that all Defendants had actual or constructive knowledge of Ramsey, Green, and Hanna's unconstitutional behavior. The Amended Complaint describes a lawless environment permeated by "vigilante justice." (Am. Compl. ¶¶ 13-14.) It is in this context that Crowder ignored his supporting officer's complaints about Ramsey, Green, and Hanna's behavior. (*Id.* ¶ 111.) On the same day of Younger's beating, Crowder is alleged to have chastised the MRDCC officers as "soft" and encouraged them to beat inmates. (*Id.* ¶ 53.) After Younger's assault, he allegedly entered his cell and expressed his understanding that

[10] The parties debate whether Younger should be considered a "pretrial detainee" or a "prisoner" for purposes of this analysis. As discussed *infra*, the record is somewhat ambiguous on this issue. The Court need not resolve the issue for purposes of its § 1983 analysis, because Younger has satisfied the more rigorous standards applicable to prisoners.

Younger had not attempted to harm the injured officer on the previous day—and yet Younger was still subject to disciplinary action. (*Id.* ¶¶ 68, 71, 73.) These allegations sufficiently demonstrate that Crowder not only demonstrated an "inadequate response" to his inferior officer's behavior, but expressly sanctioned it and encouraged it.

The allegations against Dupree and Singletary are of a similar variety. Singletary was the shift commander for Ramsey, Green, and Hanna. (*Id.* ¶ 102.) He was present in 2013 when the three officers beat an inmate who was shackled in a three-point restraint, and never reported this incident. (*Id.* ¶ 103.) Dupree was tasked with compiling a report which "listed correctional staff at MRDCC who were either under investigation, or were suspected of violating prison policies and protocols" and that Ramsey, Green, and Hanna were among those staff suspected of wrongdoing. (*Id.* ¶ 100.) Nevertheless, Dupree funneled staff complaints about inmates to the trio, knowing that they would carry out retributory violence. (*Id.* ¶ 101.) Though Singletary and Dupree may not have contemplated an assault against Younger in particular, the law does not impose this requirement—only that the defendant in question is alleged to have been aware of a risk of constitutional injury to citizens "*like* the plaintiff." *Shaw*, 13 F.3d at 799. For all of these reasons, Younger has sufficiently pled a § 1983 cause of action against the Defendants.

IV. Younger has stated a claim under Article 24 of the Maryland Declaration of Rights.

Finally, Defendants argue that Younger's excessive force claims are "rooted in the Eighth Amendment and, by implication, its State analogs, Articles 16 and 25" because Plaintiff alleges that he is a prisoner, not a

pretrial detainee. (Crowder Mot. 33-34, ECF No. 154-1.) Accordingly, Defendants argue, his claim under the due process provisions of Article 24 must be dismissed.

This Court rejects the argument. Although the Amended Complaint repeatedly describes Youngers as "prisoner," there is no dispute that Younger was a pretrial detainee at the time of the events in question. All parties to the State Court proceedings acknowledged this. (*See* State's Motion *in Limine*, State Case, Paper No. 60/0, ECF No. 166-1); (Joint Statement of Facts, State Case, Paper No. 72/0, ECF No. 166-3)).[11]

CONCLUSION

For the foregoing reasons, the Motion to Dismiss all Claims in the Amended Complaint Against Defendant Tyrone Crowder (ECF No. 154), the Motion to Dismiss all Claims in Amended Complaint Against Defendant Wallace Singletary (ECF No. 155); and Defendant Dupree's Motion to Dismiss (ECF No. 156) are all DENIED.

A separate Order follows.

Dated: November 19, 2019

_____/s/_____
Richard D. Bennett
United States District Judge

[11] This Court will reexamine this position should the evidence reveal that Plaintiff was not, in fact, a pretrial detainee.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEVIN YOUNGER,	*	
Plaintiff,	*	
v.	*	Civil Action No. RDB-16-3269
STATE OF MARYLAND, *et al.*,	*	
Defendants.	*	

* * * * * * * * *

MEMORANDUM OPINION

Plaintiff Kevin Younger ("Plaintiff" or "Younger"), "a prisoner in the Maryland Division of Correction housed at the Maryland Reception, Diagnostic & Classification Center ("MRDCC")," has brought this action against the State of Maryland, current Secretary of the Maryland Department of Public Safety and Correctional Services ("DPSCS") Stephen T. Moyer ("Secretary Moyer"), in his *official* capacity[1], and former MRDCC Warden Tyrone

[1] Secretary Moyer did not yet hold the office of Secretary of the Maryland Department of Public Safety and Correctional Services at the time of the facts alleged in the Complaint. Rather, former Secretary Gary D. Maynard was the DPSCS Secretary at that time. Younger has sued Moyer "in his official capacity . . . in the shoes of his predecessors," although he has subsequently clarified in his Response to the pending motions that he also seeks to sue Moyer in his *individual* capacity. *See* Pl. Response, p. 8, ECF No. 67. This Court has addressed both suits herein. Younger has not sued any of the other Defendants, aside from the State of Maryland, in their "official capacities" and has confirmed in his Response brief that he intends to sue them in their *individual* capacities. *Id.*

Crowder ("Crowder")[2] (collectively the "State Defendants"); MRDCC "supervisory correctional officers[s]" Pamela Dixon ("Dixon"), Wallace Singletary ("Singletary"), and Neil Dupree ("Dupree"); and MRDCC "correctional officer[s]" Jemiah

Green ("Green"), Richard Hanna ("Hanna"), and Kwasi Ramsey ("Ramsey"). Compl., ¶¶ 1-10, ECF No. 1. Younger alleges violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983 (Count One)[3]; Excessive Force, in violation of Article 24 of the Maryland Declaration of Rights (Count Two); Cruel and Unusual Punishment, in violation of Articles 16 and 25 of the Maryland Declaration of Rights (Count Three);[4] Battery (Count Five); Intentional Infliction of Emotional Distress (Count Six); Conspiracy (Count Seven); Negligent Hiring, Training, and Supervision (Count Eight); Gross Negligence (Count Nine); and Respondeat Superior (Count Ten)[5], in connection with his alleged "assault[ ] and

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[2] It is undisputed that Crowder was the Warden of the Maryland Reception, Diagnostic & Classification Center at the time of the events alleged in Younger's Complaint (ECF No. 1).

[3] Specifically, Younger alleges violations of his "right to be free from the use of excessive and unreasonable force and seizure," "the right to be free from a deprivation of life and liberty without due process of law," "the right to be free from cruel and unusual punishment," and "the right to be free from deliberate indifference for a serious medical need." *See* Compl., ¶ 102, ECF No. 1.

[4] Articles 16, 24, and 25 of the Maryland Declaration of Rights are interpreted *in pari materia* with their federal counterparts, the Eighth and Fourteenth Amendments to the United States Constitution. *See, e.g., Evans v. State*, 914 A.2d 25, 67 (Md. 2006); *Pitsenberger v. Pitsenberger*, 410 A.2d 1052, 1056 (Md. 1980).

[5] Younger initially brought an assault claim against Defendants Crowder, Ramsey, Green, Hanna, Dixon, Singletary, and Dupree

beating" by correctional officers Green, Hanna, and Ramsey on September 30, 2013. *Id.* ¶¶ 37, 100-193.[6]

Currently pending before this Court are the State Defendants' Motion to Dismiss or, *in the alternative*, for Summary Judgment (ECF No. 46) and Defendants Dupree and Singletary's Motion to Dismiss or, *in the alternative*, for Summary Judgment (ECF No. 60).[7] This Court has reviewed the parties' submissions, and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2016). For the reasons stated herein, the State Defendants' Motion to Dismiss (ECF No. 46) is GRANTED as to Younger's claims against the State of Maryland in Counts Two, Three, Eight, and Ten of the Complaint and Younger's claims against Secretary Moyer, in both his *individual* and *official* capacities, in Counts One and Eight of the Complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.[8] The

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(Count Four), but has since voluntarily dismissed that claim with prejudice. *See* Margin Order, ECF No. 53.

[6] Nicholas Cottman, one of four other prisoners allegedly assaulted by Ramsey, Green, and Hanna on that day, has filed a similar Section 1983 civil rights action in this Court against the State of Maryland, Secretary Moyer, Crowder, Dupree, Green, Hanna, and Ramsey. *See Cottman v. State of Maryland, et al.*, RDB-16-3306.

[7] Defendants Green, Hanna, Ramsey, and Dixon have not moved to dismiss Younger's claims against them. Defendants Hanna and Ramsey have both filed Answers to the Complaint (ECF Nos. 56 & 65). The Clerk of this Court has entered Orders of Default (ECF Nos. 70 & 71) against both Defendants Green and Dixon for failure to plead or otherwise defend.

[8] Although Defendants have moved, in the alternative, for summary judgment, this Court will not convert their motions to motions for summary judgment. Younger has not yet had the benefit of discovery in this case and has requested "an opportunity to either confirm, or obtain facts to rebut, Defendants' assertions." Pl. Response, p. 23, ECF No. 67. "Generally speaking, 'summary judgment [must] be

State Defendants' Motion to Dismiss (ECF No. 46) is DENIED as to Younger's claims against Crowder in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint, and Dupree and Singletary's Motion to Dismiss (ECF No. 60) is also DENIED as to Younger's claims against them in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint. Additionally, the State Defendants' Motion to Dismiss (ECF No. 46) and Defendants Dupree and Singletary's Motion to Dismiss (ECF No. 60) are both DENIED as to Younger's Conspiracy claim (Count Seven). Therefore, Defendants State of Maryland and Secretary Moyer, in both his *individual* and *official* capacities, are DISMISSED from this action. All other claims against the additional Defendants remain.

BACKGROUND

At the motion to dismiss stage, this Court accepts as true the facts alleged in the Plaintiff's Complaint. *See Aziz v. Alcolac, Inc.*, 658 F.3d 388, 390 (4th Cir. 2011). Plaintiff Kevin Younger ("Plaintiff" or "Younger") is "a prisoner in the Maryland Division of Correction housed at the Maryland Reception, Diagnostic & Classification Center ("MRDCC")." Compl., ¶ 1, ECF No. 1. "On the evening of September 29, 2013, [Younger] . . . witnessed a fight between two inmates and a correctional officer in which the correctional officer was seriously injured." *Id.* ¶ 18. Although Younger was not involved in the fight and had "no history of disciplinary infractions at that time," he was removed from general housing and transferred to

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refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.' " *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986)).

"various other cells in MRDCC" with "the two inmates who participated in the confrontation" and "at least two other prisoners." *Id.* ¶¶ 18-21.

On the morning of September 30, 2013, Younger alleges that Wallace Singletary ("Singletary"), a "supervisory correctional officer" at MRDCC, ordered Neil Dupree ("Dupree"), also a "supervisory correctional officer," to "print out photographs of the injured correctional officer so that they could be shown to the incoming correctional officers before they began their daily shifts." *Id.* ¶ 24. He claims that former MRDCC Warden Tyrone Crowder ("Crowder") and Dupree displayed the photographs to correctional officers at that morning's "roll call," "effectively sanction[ing] a retaliatory attack against the five prisoners, including [Younger], who they believed were involved in the previous day's altercation," and that Crowder specifically "admonished the correctional officers for their handling of the altercation on the prior day, calling them 'soft' and stating that they 'should [have] beat the inmates' who were allegedly involved in the fight." *Id.* ¶¶ 25-32.

Younger claims that correctional officers Jemiah Green ("Green"), Richard Hanna ("Hanna"), and Kwasi Ramsey ("Ramsey") were present at that roll call, that they were well-known for their "violent enforcement" of prison policies, and that Crowder, Singletary, Dupree, and the Secretary of the Maryland Department of Public Safety and Correctional Services were all well aware of "previous use of force complaints" against them. *Id.* ¶¶ 34-35; 87-91. Following the roll call, he alleges that Green, Hanna, and Ramsey "sought to exact revenge on the five prisoners, including [Younger]" and "systematically moved about MRDCC . . . brutally assaulting and beating" each one of them, including Younger. *Id.* ¶¶ 36-37. Younger alleges that around 7:00 a.m. on September 30,

2013, Green, Hanna, and Ramsey "entered [his] cell, grabbing [him] by his shirt and legs, and throwing him from the top bunk onto the concrete floor," then proceeded to "strik[e] him on his head, face, and body, with handcuffs, radios, and keys . . . kick[ing] and stomp[ing] [him] as he lay defenseless on the ground." *Id.* ¶¶ 42-44. Younger claims that "supervisory correctional officer" Pamela Dixon ("Dixon") "was seated at the sergeant's desk at the end of the tier . . . in plain view from [his] cell" during the beating. *Id.* ¶ 50. Younger alleges that the officers "left [him] in a pool of blood on the concrete floor of his cell" and proceeded to beat each of the other prisoners whose photographs were displayed in the same way. *Id.* ¶¶ 48-49, 56.

Younger contends that Green eventually returned to transport him to the medical unit and ordered him to write on an Incident Report Form "that he sustained his injuries by falling from his bunk bed." *Id.* ¶¶ 53-54. He claims that Dupree, "[a]s the only supervisory lieutenant," responded to the "medical alerts" for all five prisoners following the beatings and "observed correctional officers bringing [Younger] down the stairs toward the medical unit." *Id.* ¶ 61-62. Younger alleges that "Dupree asked [ ] Ramsey what had happened" and accepted his explanation that Younger "fell . . . despite [his] injuries being markedly inconsistent with the asserted explanation," and that Dupree further "failed to seek emergency medical attention, . . . launch an investigation into the five prisoners' injuries, . . . [or] interview [Younger]." *Id.* ¶¶ 63-67. Younger contends that "[t]he assault and beating of the five prisoners . . . as a form of discipline, was consistent with the culture of MRDCC under [ ] Crowder's leadership." *Id.* ¶ 69.

An Internal Investigation Division ("IID") report ultimately concluded that "on the morning of September

30, 2013 . . . Ramsey, Green, and Hanna . . . [did assault] the prisoners, including [Younger], who they believed were involved in the fight on the previous evening with the correctional officer." *Id.* ¶ 80. "Crowder is no longer the Warden of MRDCC following the assault on the five prisoners," and Ramsey, Green, and Hanna have been criminally indicted. *Id.* ¶¶ 82-83. "On May 6, 2015, [ ] Hanna plead guilty to conspiracy to commit first degree assault on the five prisoners, including [Younger]," and a jury found Green and Ramsey "guilty of second degree assault and misconduct in office for the assaults." *Id.* ¶¶ 85-86. Younger has now brought this civil action against the State of Maryland, Secretary Moyer, and Crowder (collectively the "State Defendants"); "supervisory correctional officers[s]" Dixon, Singletary, and Dupree; and "correctional officer[s]" Green, Hanna, and Ramsey, alleging violations of his rights under the United States Constitution and the Maryland Declaration of Rights as well as various Maryland tort law claims.

STANDARD OF REVIEW

I. Motion to Dismiss Under Rule 12(b)(1) of the Federal Rules of Civil Procedure

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction challenges a court's authority to hear the matter brought by a complaint. *See Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005). This challenge under Rule 12(b)(1) may proceed either as a facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting "that the jurisdictional allegations of the complaint [are] not true." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009) (citation omitted). With respect to a facial challenge, a

court will grant a motion to dismiss for lack of subject matter jurisdiction "where a claim fails to allege facts upon which the court may base jurisdiction." *Davis*, 367 F. Supp. 2d at 799. Where the challenge is factual, "the district court is entitled to decide disputed issues of fact with respect to subject matter jurisdiction." *Kerns*, 585 F.3d at 192. As this Court has explained in *Dennard v. Towson Univ.*, 62 F. Supp. 3d 446, 449 (D. Md. 2014), "[a]n assertion of governmental immunity is properly addressed under Rule 12(b)(1)." (citing *Smith v. WMATA*, 290 F.3d 201, 205 (4th Cir. 2002)). A plaintiff carries the burden of establishing subject matter jurisdiction. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999).

II. Motion to Dismiss Under Rule 12(b)(6) of the Federal Rules of Civil Procedure

Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes the dismissal of a complaint if it fails to state a claim upon which relief can be granted. The purpose of Rule 12(b)(6) is "to test the sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006). The United States Supreme Court's recent opinions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), "require that complaints in civil actions be alleged with greater specificity than previously was required." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (citation omitted). In *Twombly*, the Supreme Court articulated "[t]wo working principles" that courts must employ when

ruling on Rule 12(b)(6) motions to dismiss. *Iqbal*, 556 U.S. at 678. First, while a court must accept as true all the factual allegations contained in the complaint, legal conclusions drawn from those facts are not afforded such deference. *Id.* (stating that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to plead a claim); *see also Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) ("Although we are constrained to take the facts in the light most favorable to the plaintiff, we need not accept legal conclusions couched as facts or unwarranted inferences, unreasonable conclusions, or arguments." (internal quotation marks omitted)). Second, a complaint must be dismissed if it does not allege "a plausible claim for relief." *Iqbal*, 556 U.S. at 679.

ANALYSIS

I. The State Defendants' Motion to Dismiss (ECF No. 46)

A. The State of Maryland

Although Plaintiff Younger has brought claims against the State of Maryland for Excessive Force, in violation of Article 24 of the Maryland Declaration of Rights (Count Two); Cruel and Unusual Punishment, in violation of Articles 16 and 25 of the Maryland Declaration of Rights (Count Three); Negligent Hiring, Training, and Supervision (Count Eight); and Respondeat Superior (Count Ten), Younger now concedes that the State of Maryland is immune from suit as to all four counts. Pl. Response, p. 6, ECF No. 67.

As Judge Paul Grimm of this Court has confirmed this month in *McIntosh v. Div. of Corr.*, No. PWG-16-1320, 2017 WL 3412081, at *4 (D. Md. Aug. 7, 2017), "[t]he Eleventh Amendment [to the United States Constitution] bars suits for damages against a state in federal court

unless the state has waived sovereign immunity or Congress has abrogated its immunity." (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984)). "Although the State of Maryland has waived its sovereign immunity for certain types of cases brought in state court, *see* Md. Code Ann., State Gov't § 12-104, it has not waived its immunity under the Eleventh Amendment to suit in federal court." *Id.* "If sovereign immunity has not been waived, federal courts lack subject-matter jurisdiction over the claim[s]." *Robinson v. Pennsylvania Higher Educ. Assistance Agency*, No. GJH-15-0079, 2017 WL 1277429, at *2 (D. Md. Apr. 3, 2017). Accordingly, the State Defendants' Motion to Dismiss (ECF No. 46) is GRANTED as to Younger's claims against the State of Maryland in Counts Two, Three, Eight, and Ten of the Complaint. All claims against the State of Maryland shall be DISMISSED for lack of subject-matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

B. Secretary Stephen T. Moyer

Younger has brought two claims against the current Secretary of the Maryland Department of Public Safety and Correctional Services ("DPSCS") Stephen T. Moyer ("Secretary Moyer") for violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983 (Count One) and Negligent Hiring, Training, and Supervision (Count Eight). Compl., ¶¶ 100-183, ECF No. 1. Although the Complaint states, *inter alia*, that "[Secretary] Moyer is sued in his official capacity as the Secretary of DPSCS, and stands in the shoes of his predecessors for the purposes of this action," *id.* ¶ 10, Younger has since clarified in his Response (ECF No. 67) to the pending motions that he also intends to sue Secretary Moyer in his

individual capacity. Secretary Moyer has now moved to dismiss all claims against him.

To the extent Younger has sued Secretary Moyer in his *official* capacity, his claims shall likewise be dismissed under the doctrine of sovereign immunity. "Although state officials are literally persons, 'a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself.' " *McIntosh*, 2017 WL 3412081, at *4 (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) (internal citations omitted)). Younger does not contest the dismissal of his claims against Secretary Moyer in his *official capacity*.

To the extent Younger has also sued Secretary Moyer in his *individual capacity*, those claims shall also be dismissed for failure to state a claim for relief, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Under Section 1983, *individual* liability must be based on *personal* conduct. *See Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985). While Younger has alleged that "[t]he prior bad acts by Defendants Ramsey, Green, Hanna, and Dixon were . . . known to [Secretary Moyer], DPSCS, and the State of Maryland by way of official Use of Force incident reports, but no corrective action was taken," Compl., ¶ 91, ECF No. 1, it is undisputed that Secretary Moyer did not yet hold the office of Secretary of the Maryland Department of Public Safety and Correctional Services at the time of the facts alleged in the Complaint. Rather, former Secretary Gary D. Maynard was the DPSCS Secretary at that time.[9] *See* Mem. Supp. State

[9] This Court takes judicial notice of the fact that Gary D. Maynard served as the Secretary of the Maryland Department of Public Safety

Def. Mot., p. 5, n. 1, ECF No. 46-1. As this Court observed in *Calhoun-El v. Bishop*, No. RDB-13-3868, 2016 WL 5453033, at *4 (D. Md. Sept. 29, 2016), "any duty to train and supervise the correctional officer defendants would have arisen within their official capacities only (i.e., in their position as secretaries of the Department of Public Safety and Correctional Services)."

Additionally, this Court has held that "[w]hile inadequacy of police training can serve as a basis for liability under § 1983, this is so only where the failure to train is so flagrant that it amounts to 'deliberate indifference' on the part of [defendant] with respect to "the rights of persons with whom the police come into contact." *Hall v. Fabrizio*, No. JKB-12-754, 2012 WL 2905293, at *2 (D. Md. July 13, 2012) (quoting *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989)). Thus, "[e]ven at the pleadings stage, a plaintiff seeking to impose liability on a failure-to-train theory cannot rely on legal conclusions and speculations, but must allege at least some facts showing: (1) the nature of the training; (2) that any failure to train was a deliberate or conscious choice by

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and Correctional Services ("DPSCS") from March 1, 2007 to December 12, 2013. *See* Maryland Manual On-Line, Department of Public Safety & Correctional Services, Former Secretaries, http://msa.maryland.gov/msa/mdmanual/22dpscs/former/html/msa14662.html. Defendant Stephen T. Moyer, the current Secretary of the Maryland Department of Public Safety and Correctional Services, did not assume office until February 13, 2015, after serving as Acting Secretary from January 21, 2015 through February 13, 2015. Maryland Manual On-Line, Department of Public Safety & Correctional Services, Secretary, http://msa.maryland.gov/msa/mdmanual/22dpscs/html/msa17099.html. It is well-established that "[a] federal court may take judicial notice of . . . matters of public record in conjunction with a Rule 12(b)(6) motion to dismiss without converting it into a motion for summary judgment." *Helfand v. W.P.I.P., Inc.*, 165 F. Supp. 3d 392, 397 n. 6 (D. Md. 2016).

[defendants]; and (3) that any alleged constitutional violations were actually caused by the failure to train." *Id.* Although Younger baldly alleges that Secretary Moyer "ignored the lawless and ruthless environment maintained at MRDCC" and "knew or should have known that the Defendant Correctional Officers and Defendant Supervisory Administrative Officials would cause [him] to be assaulted and beaten," he has failed to allege any "factual content" to support his "recitation of the elements," as required by the United States Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Younger's state law claim of Negligent Hiring, Training, and Supervision (Count Eight) against Secretary Moyer in his *individual* capacity fails for the same reasons discussed *supra*. This Court has recently confirmed in *Anderson v. Home Depot U.S.A., Inc.*, No. GJH-14-2615, 2017 WL 2189508, at *9 (D. Md. May 16, 2017) that " '[a]s in any action for negligence, a plaintiff asserting a cause of action for negligent hiring or retention must prove duty, breach, causation, and damages.' " (quoting *Asphalt & Concrete Servs., Inc. v. Perry*, 108 A.3d 558, 571 (Md. Ct. Spec. App. 2015), *aff'd*, 133 A.3d 1143 (Md. 2016), *reconsideration denied* (Apr. 21, 2016)). Younger has raised no specific allegations as to Secretary Moyer's supervision or training of prison officials, nor can Younger state a claim as to causation, as it is undisputed that Secretary Moyer did not yet hold the office of Secretary of the Maryland Department of Public Safety and Correctional Services at the time of the facts alleged in the Complaint. Furthermore, as noted *supra*, this Court has previously observed in *Calhoun-El,* 2016 WL 5453033, at *4 that "any duty to train and supervise the correctional officer defendants would have arisen within [Secretary Moyer's] *official* capacit[y] only," not

his *individual* capacity. For all of these reasons, the State Defendants' Motion to Dismiss (ECF No. 46) is GRANTED as to Younger's claims against Secretary Moyer in Counts One and Eight of the Complaint. All claims against Secretary Moyer in his *official* capacity shall be DISMISSED for lack of subject-matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and all claims against Secretary Moyer in his *individual* capacity shall also be DISMISSED for failure to state a claim for relief, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

C. Former Warden Tyrone Crowder

Younger has raised a total of eight counts against the final State Defendant, former Warden of the Maryland Reception, Diagnostic & Classification Center ("MRDCC") Tyrone Crowder ("Crowder"), for violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983 (Count One); Excessive Force, in violation of Article 24 of the Maryland Declaration of Rights (Count Two); Cruel and Unusual Punishment, in violation of Articles 16 and 25 of the Maryland Declaration of Rights (Count Three); Battery (Count Five); Intentional Infliction of Emotional Distress (Count Six); Conspiracy (Count Seven); Negligent Hiring, Training, and Supervision (Count Eight); and Gross Negligence (Count Nine). Compl., ¶¶ 100-189, ECF No. 1. Younger has not named Crowder in his *official* capacity. On the contrary, he has specifically indicated in his Response (ECF No. 67) to the pending motions that he intends to

sue former Warden Crowder in his *individual* capacity.[10] Crowder has now moved to dismiss all claims against him.

Crowder contends that he is shielded from liability as to all claims under the doctrine of "qualified immunity." "Qualified immunity may be invoked by a government official sued in his personal, or individual, capacity." *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 306 (4th Cir. 2006) (citing *Kentucky v. Graham*, 473 U.S. 159, 165-67 (1985)). As the United States Court of Appeals for the Fourth Circuit has explained this month in *Humbert v. Mayor & City Council of Baltimore City*, No. 15-1768, 2017 WL 3366349, at *4 (4th Cir. Aug. 7, 2017), "[q]ualified immunity shields government officials from liability in a § 1983 suit as long as their conduct has not violated 'clearly established statutory or constitutional rights of which a reasonable person would have known.' " (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "To determine whether an officer is entitled to qualified immunity, the court must examine (1) whether the facts illustrate that the officer violated the plaintiff's constitutional right . . . , and (2) whether the right was clearly established at the time of the alleged event such that 'a reasonable officer would have understood that his conduct violated the asserted right.' " *Id.* (quoting *Miller v. Prince George's County*, 475 F.3d 621, 627 (4th Cir. 2007)). "The answer to both questions must be in the affirmative to defeat the officer's

[10] To the extent Younger has also brought these claims against Crowder in his *official* capacity, those claims are dismissed for the reasons discussed *supra* as to Secretary Moyer. This Court has recently held in *Young v. Bishop*, No. TDC-16-0242, 2017 WL 784664, at *3 (D. Md. Feb. 28, 2017) that the Eleventh Amendment immunizes a prison Warden employed by the Maryland Department of Public Safety and Correctional Services from suit as to all claims, with the exception of those seeking injunctive relief.

entitlement to immunity." *Id.* Although "[a] qualified immunity defense can be presented in a Rule 12(b)(6) motion," the Fourth Circuit has observed that "when asserted at this early stage in the proceedings, 'the defense faces a formidable hurdle' and 'is usually not successful.' " *Owens v. Baltimore City State's Attorneys Office*, 767 F.3d 379, 396 (4th Cir. 2014) (quoting *Field Day, LLC v. Cnty. of Suffolk*, 463 F.3d 167, 191–92 (2d Cir. 2006)).

Younger has undoubtedly alleged a violation of his rights. "There is no serious dispute that [Younger] was beaten by correctional officers Kwasi Ramsey, Jemiah Green, and Richard Hanna in retaliation" for the assault on a correctional officer. Mem. Supp. State Def. Mot., p. 3, ECF No. 46-1. Although Younger does not allege that Crowder *personally* assaulted him, he has stated a claim for "supervisory liability" under 42 U.S.C. § 1983. As this Court has confirmed this month in *Young-Bey v. B.A. Daddysboy, Cos*, et al., No. JFM-15-3642, 2017 WL 3475667, at *6 (D. Md. Aug. 10, 2017), "[i]t is well established that the doctrine of *respondeat superior* does not apply in § 1983 claims." (citing *Love-Lane v. Martin*, 355 F.3d 766, 782 (4th Cir. 2004)). However, "[l]iability of supervisory officials 'is not based on ordinary principles of *respondeat superior*, but rather is premised on a recognition that supervisory indifference or tacit authorization of subordinates' misconduct may be a causative factor in the constitutional injuries they inflict on those committed to their care.' " *Id.* (quoting *Baynard v. Malone*, 268 F.3d 228, 235 (4th Cir. 2001)). "Supervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the

supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." *Id.* (citing *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994)).

Unlike Secretary Moyer, it is undisputed that Crowder was in fact the Warden of the MRDCC at the time of the facts alleged in the Complaint. Younger has not only alleged that Crowder had actual or constructive knowledge of his assault on September 30, 2013 and showed deliberate indifference to the actions of Officers Ramsey, Green, and Hanna, but has in fact alleged that he "effectively sanctioned a retaliatory attack" against Younger and four other inmates "who [he] believed were involved in the previous day's altercation." Compl., ¶ 32, ECF No. 1. He has alleged that Crowder "attended at least one of the roll calls" on the morning of September 30, 2013 and "displayed photographs depicting the injuries to the correctional officer involved in the fight" the previous evening. *Id.* ¶¶ 25-26. Younger further alleges that "[d]uring that same roll call," Crowder "also circulated pictures of the five prisoners who were removed from the general housing unit directly following the fight," including Younger, and "identified [them] as being responsible for the fight." *Id.* ¶¶ 27-28. He claims that Crowder "admonished the correctional officers for their handling of the altercation on the prior day, calling them 'soft' and stating that they 'should [have] beat the inmates' who were allegedly involved in the fight." *Id.* ¶ 29. Younger has alleged that "Former Assistant Warden Suzanne Fisher advised [Crowder] that the same correctional officers' names [including Officers Ramsey and Green] were appearing in periodic use of force

reports," but that Crowder "failed to ensure that [they] . . . were trained in proper techniques for prisoner discripline." *Id.* ¶¶ 71-72. As for an "affirmative causal link between [Crowder's] inaction and the . . . injury suffered," Younger has clearly alleged that he and "each of the other four prisoners . . . whose photographs were displayed at roll call" by Crowder "were assaulted and beaten in [a] brutal manner" by Officers Ramsey, Green, and Hanna. *Id.* ¶ 59.

Younger has likewise sufficiently alleged a violation of rights that were "clearly established at the time of the alleged event," the second element necessary to defeat Crowder's assertion of qualified immunity at this stage. The United States Court of Appeals for the Fourth Circuit has recently confirmed in *Bounds v. Parsons*, No. 16-1686, 2017 WL 2992085, at *3 (4th Cir. July 14, 2017) that "satisfy[ing] the 'clearly established' prong of the qualified immunity inquiry [does not] require 'a case directly on point.' " (quoting *Smith v. Ray*, 781 F.3d 95, 100 (4th Cir. 2015)). "[T]he lodestar for whether a right was clearly established is whether the law 'gave the officials 'fair warning' that their conduct was unconstitutional.' " *Iko v. Shreve*, 535 F.3d 225, 238 (4th Cir. 2008) (quoting *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 313 (4th Cir. 2006)). It is well-established that beating a prison inmate for purposes other than to restore or maintain prison security or for the prisoner's own safety violates that prisoner's rights under the Eighth and Fourteenth Amendments to the United States Constitution. *See, e.g., Hudson v. McMillian*, 503 U.S. 1 (1992). As this Court has recently confirmed in *Jones v. Chapman*, No. ELH-14-2627, 2017 WL 2472220, at *34 (D. Md. June 7, 2017), "although the burden is on the plaintiff to prove that a constitutional violation occurred, the *defendant must prove* that the right was not

clearly established." (citing *Henry v. Purnell*, 501 F.3d 374, 377–78 (4th Cir. 2007)). Defendants have cited no authority warranting dismissal of Younger's allegations on qualified immunity grounds at this stage, although this Court's "ruling on qualified immunity at the motion to dismiss stage does not necessarily preclude revisiting the issue at the summary judgment stage." *Garcia v. Montgomery Cty., Maryland*, 145 F. Supp. 3d 492, 508 n. 2 (D. Md. 2015) (*citing Behrens v. Pelletier*, 516 U.S. 299, 309 (1996)). With respect to Younger's claims against Crowder under Articles 16, 24, and 25 of the Maryland Declaration of Rights (Counts Two & Three), Crowder's qualified immunity argument is equally unsuccessful as qualified immunity is not a defense to claims under the Maryland Constitution. *See Jones*, 2017 WL 2472220, at *33 (citing *Littleton v. Swonger*, 502 F. App'x 271, 274 & n. 2 (4th Cir. 2012)).

Crowder additionally argues that he is entitled to statutory immunity under the Maryland Tort Claims Act ("MTCA"), Md. Code Ann., State Gov't §§ 12–101 *et seq*. *See* Mem. Supp. State Def. Mot., p. 19, ECF No. 46-1. "Maryland officials are granted immunity under the Maryland Tort Claims Act . . . for [tortious acts or omissions] committed within the scope of their duties when the violations are made 'without malice or gross negligence.' " *Housley v. Holquist*, 879 F. Supp. 2d 472, 482–83 (D. Md. 2011) (quoting *Lee v. Cline*, 863 A.2d 297, 304 (Md. 2004)). "[A]n officer's actions are grossly negligent 'when they are 'so heedless and incautious as necessarily to be deemed unlawful and wanton, manifesting such a gross departure from what would be the conduct of an ordinarily careful and prudent person under the same circumstances so as to furnish evidence of indifference to consequences.' " *Id*. (quoting *Henry v. Purnell*, 652 F.3d 524, 536 (4th Cir. 2011)). For the

reasons set forth above, Younger has clearly stated a claim of "malice or gross negligence," as he has alleged that Crowder specifically "sanctioned a retaliatory attack" against him and four other inmates by showing their photos to a series of correctional officers at a roll call and instructing that they should have been "beat[en]" for allegedly injuring prison guards.

Although Defendants have submitted a Declaration of Crowder (ECF No. 46-3), in which he denies Younger's allegations, this Court accepts as true the facts alleged in the Plaintiff's Complaint at the motion to dismiss stage. *See Aziz v. Alcolac, Inc.*, 658 F.3d 388, 390 (4th Cir. 2011). As noted *supra*, this Court will not convert the pending motions to motions for summary judgment. Additionally, the Fourth Circuit has made clear that "[w]hether an officer's actions are grossly negligent, and therefore unprotected by statutory immunity, is generally a question for the jury." *Henry*, 652 F.3d at 536 (citing *Taylor v. Harford County Dep't of Soc. Servs.*, 862 A.2d 1026, 1034 (Md. 2004)). To the extent Crowder seeks to invoke Maryland common law "public official immunity," his motion likewise fails. The Court of Appeals of Maryland has made clear in *Lee v. Cline*, 863 A.2d 297, 305 (Md. 2004) that "Maryland common law qualified immunity in tort suits, for public officials performing discretionary acts, has no application in tort actions based upon alleged violations of state constitutional rights or tort actions based upon most so-called 'intentional torts.' " For all of these reasons, the State Defendants' Motion to Dismiss (ECF No. 46) is DENIED as to Younger's claims against Crowder in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint.

II. Defendants Neil Dupree and Wallace Singletary's Motion to Dismiss (ECF No. 60)

Younger has brought eight counts against Defendants Neil Dupree ("Dupree") and Wallace Singetary ("Singletary"), both allegedly "supervisory correctional officers" at the MRDCC, for violations of his rights under the Eighth and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983 (Count One); Excessive Force, in violation of Article 24 of the Maryland Declaration of Rights (Count Two); Cruel and Unusual Punishment, in violation of Articles 16 and 25 of the Maryland Declaration of Rights (Count Three); Battery (Count Five); Intentional Infliction of Emotional Distress (Count Six); Conspiracy (Count Seven); Negligent Hiring, Training, and Supervision (Count Eight); and Gross Negligence (Count Nine). Compl., ¶¶ 100-189, ECF No. 1. As with Crowder, Younger has not named Dupree or Singletary in their *official* capacities. On the contrary, he has specifically indicated in his Response (ECF No. 67) to the pending motions that he intends to sue Dupree and Singletary in their *individual* capacities. Dupree and Singletary have now moved to dismiss all claims against them.

Like Crowder, Dupree and Singletary contend that they are shielded from liability as to all claims under the doctrine of qualified immunity. However, for the same reasons discussed *supra* with respect to Crowder, Younger has alleged facts sufficient to overcome their assertion of qualified immunity at the motion to dismiss stage. As set forth above, "[q]ualified immunity shields government officials from liability in a § 1983 suit," but a plaintiff may defeat an officer's assertion of immunity by demonstrating that "the officer violated the plaintiff's constitutional right [and] . . . the right was clearly established at the time of the alleged event such that 'a

reasonable officer would have understood that his conduct violated the asserted right.' " *Humbert*, 2017 WL 3366349, at *4 (quoting *Miller*, 475 F.3d at 627). As noted *supra*, although "[a] qualified immunity defense can be presented in a Rule 12(b)(6) motion, . . . 'the defense faces a formidable hurdle' and 'is usually not successful.' " *Owens*, 767 F.3d at 396 (quoting *Field Day, LLC*, 463 F.3d at 191–92). This Court's ruling "does not necessarily preclude revisiting the issue at the summary judgment stage." *Garcia*, 145 F. Supp. 3d at 508 n. 2 (citing *Behrens*, 516 U.S. at 309).

As discussed *supra*, Younger has undoubtedly alleged a violation of his constitutional rights. "There is no serious dispute that [Younger] was beaten by correctional officers Kwasi Ramsey, Jemiah Green, and Richard Hanna in retaliation" for the assault on a correctional officer. Mem. Supp. State Def. Mot., p. 3, ECF No. 46-1. As with Crowder, Younger has not alleged that Dupree or Singetary *personally* assaulted him, but he has stated a claim for "supervisory liability" under 42 U.S.C. § 1983. As set forth *supra*, "[s]upervisory liability under § 1983 must be supported with evidence that: (1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to the knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices; and (3) there was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." *Young-Bey*, 2017 WL 3475667, at *6 (citing *Shaw*, 13 F.3d at 799).

Although Dupree and Singletary contend that they have never held "administrative roles" at the Maryland

Reception, Diagnostic & Classification Center, *see* Def. Mot., pp. 5-6, ECF No. 60-1, Younger has specifically alleged that they served as "supervisory correctional officers" at the time of the events alleged in the Complaint, Compl., ¶¶ 7-8, ECF No. 1. Younger has alleged that Dupree and Singletary "were responsible for the operation and implementation of the policies and regulations pertinent to the [Maryland Department of Public Safety and Correctional Services] . . . [including] the safety and well-being of prisoners. . . [and] the oversight and discipline of vigilante correctional officers." *Id.* ¶ 96.

Younger has not only alleged that Dupree and Singletary had actual or constructive knowledge of his assault on September 30, 2013 and showed deliberate indifference to the actions of Officers Ramsey, Green, and Hanna, but has in fact alleged that they "encouraged" MRDCC correctional officers "to use physical discipline" and "fostered and encouraged an environment of vigilante justice." *Id.* ¶¶ 70, 97. He has alleged that prior to the first roll call on September 30, 2013, "Singletary ordered [ ] Dupree to print out photographs of the injured correctional officers so that they could be shown to the incoming correctional officers before they began their daily shifts." *Id.* ¶ 24. Younger further alleges that Dupree, like Crowder, "also attended a roll call that day," "displayed pictures of the five prisoners who were removed from the general housing unit directly following the fight on September 29, 2013" and "effectively sanctioned a retaliatory attack against [them]." *Id.* ¶¶ 30-32. He claims that Dupree and Singletary were both aware of "previous use of force complaints" against Green, Ramsey, and Hanna prior to September 30, 2013. *Id.* ¶¶ 87-89. As for an "affirmative causal link between [Dupree and Singletary's] inaction and the . . . injury

suffered," Younger has clearly alleged that he and "each of the other four prisoners . . . whose photographs were displayed at roll call" "were assaulted and beaten in [a] brutal manner" by Officers Ramsey, Green, and Hanna. *Id.* ¶ 59. Younger further claims that,"[a]s the only supervisory lieutenant," Dupree responded to the "medical alerts" for all five prisoners following the alleged beatings. *Id.* ¶ 61. He claims that "Dupree observed correctional officers bringing [Younger] down the stairs toward the medical unit, and asked [ ] Ramsey what had happened." *Id.* ¶ 62. When Ramsey informed Dupree that Younger "fell," Younger alleges that "Dupree accepted this explanation, despite [his] injuries being markedly inconsistent with the asserted explanation," and "failed to seek emergency medical attention, . . . launch an investigation into the five prisoners' injuries, . . . [or] interview [Younger]." *Id.* ¶¶ 63-67.

As explained *supra*, Younger has likewise sufficiently alleged that his violated rights were clearly established at the time of the alleged event, the second element necessary to defeat Dupree and Singletary's assertion of qualified immunity at this stage. It is well-established that beating a prison inmate for purposes other than to restore or maintain prison security or for the prisoner's own safety violates that prisoner's rights under the Eighth and Fourteenth Amendments to the United States Constitution. *See, e.g., Hudson v. McMillian*, 503 U.S. 1 (1992). Accordingly, Younger's Section 1983 claims against Dupree and Singletary shall not be dismissed on qualified immunity grounds. With respect to Younger's claims against Dupree and Singletary under Articles 16, 24 and 25 of the Maryland Declaration of Rights (Counts Two & Three), his argument also fails as qualified immunity is not a defense to claims under the Maryland Constitution, as discussed *supra*. *See Jones*, 2017 WL

2472220, at *33 (citing *Littleton*, 502 F. App'x at 274 & n.2).

Like Crowder, Dupree and Singletary additionally argues that they are entitled to statutory immunity under the Maryland Tort Claims Act ("MTCA"), Md. Code State Gov't, §§ 12–101 *et seq*. *See* Mem. Supp. Def. Mot., p. 20, ECF No. 60. As discussed above, "Maryland officials are granted immunity under the Maryland Tort Claims Act . . . for [tortious acts or omissions] committed within the scope of their duties when the violations are made 'without malice or gross negligence.' " *Housley*, 879 F. Supp. 2d at 482–83 (D. Md. 2011) (quoting *Lee*, 863 A.2d at 304). However, as with Crowder, Younger has clearly stated a claim of "malice or gross negligence" against Dupree and Singletary, as he has alleged that they specifically participated in "encourage[ing]" the attacks on September 30, 2013.

Although Defendants have submitted Declarations of Dupree and Singletary (ECF Nos. 60-3 & 60-4), in which they deny Younger's allegations, this Court accepts as true the facts alleged in a plaintiff's complaint at the motion to dismiss stage. *See Aziz v. Alcolac, Inc*., 658 F.3d 388, 390 (4th Cir. 2011). As noted *supra*, this Court will not convert the pending motions to motions for summary judgment. Additionally, the Fourth Circuit has made clear that "[w]hether an officer's actions are grossly negligent, and therefore unprotected by statutory immunity, is generally a question for the jury." *Henry*, 652 F.3d at 536 (citing *Taylor v. Harford County Dep't of Soc. Servs.*, 862 A.2d 1026, 1034 (Md. 2004)). To the extent Dupree and Singletary seek to invoke Maryland common law "public official immunity," their motion likewise fails. The Court of Appeals of Maryland has made clear in *Lee v. Cline*, 863 A.2d 297, 305 (Md. 2004) that "Maryland common law qualified immunity in tort suits, for public

officials performing discretionary acts, has no application in tort actions based upon alleged violations of state constitutional rights or tort actions based upon most so-called 'intentional torts.' " For all of these reasons, Dupree and Singletary's Motion to Dismiss (ECF No. 60) is also DENIED as to Younger's claims against them in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint.

III. Younger's Conspiracy Claim (Count Seven)

Defendants Crowder, Dupree, and Singletary have all moved to dismiss Younger's Conspiracy claim against them in Count Seven of the Complaint. *See* Mem. Supp. State Def. Mot., p. 24, ECF No. 46-1; Mem. Supp. Def. Mot., p. 24, ECF No. 60-1. They contend that Younger has failed to allege "a concerted effort or agreement between [them] to deny [him] a constitutional right" and that he has raised only "naked assertions." *Id.* "Under Maryland law, civil conspiracy is defined as the 'combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff.' " *Marshall v. James B. Nutter & Co.*, 758 F.3d 537, 541 (4th Cir. 2014) (quoting *Hoffman v. Stamper*, 867 A.2d 276, 290 (Md. 2005) (quoting *Green v. Wash. Suburban Sanitary Comm'n*, 269 A.2d 815, 824 (Md. 1970))). "In addition to proving an agreement, 'the plaintiff must also prove the commission of an overt act, in furtherance of the agreement, that caused the plaintiff to suffer actual injury.' " *Id.*

Younger has specifically alleged that the Defendants "*agreed* that the Defendant Correctional Officers would assault, batter, inflict emotional distress upon, and deprive [Younger] of his constitutional rights." Compl., ¶

163, ECF No. 1 (emphasis added). He has alleged that on the morning of September 30, 2013, "Singletary ordered [Dupree] to print out photographs of the injured correctional officer so that they could be shown to the incoming correctional officers," that Crowder and Dupree "displayed" those photographs to the officers during roll call, and that all three Defendants "encouraged" the correctional officers "to use physical force." *Id.* ¶¶ 24, 26, 31, 70. For these reasons, Younger has alleged both elements of a conspiracy claim. Accordingly, the State Defendants' Motion to Dismiss (ECF No. 46) and Defendants Dupree and Singletary's Motion to Dismiss (ECF No. 60) are both DENIED as to Younger's Conspiracy claim (Count Seven).

For the foregoing reasons, the State Defendants' Motion to Dismiss (ECF No. 46) is GRANTED as to Younger's claims against the State of Maryland in Counts Two, Three, Eight, and Ten of the Complaint and Younger's claims against Secretary Moyer, in both his *individual* and *official* capacities, in Counts One and Eight of the Complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. The State Defendants' Motion to Dismiss (ECF No. 46) is DENIED as to Younger's claims against Crowder in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint, and Dupree and Singletary's Motion to Dismiss (ECF No. 60) is also DENIED as to Younger's claims against them in Counts One, Two, Three, Five, Six, Seven, Eight, and Nine of the Complaint. Additionally, the State Defendants' Motion to Dismiss (ECF No. 46) and Defendants Dupree and Singletary's Motion to Dismiss (ECF No. 60) are both DENIED as to Younger's Conspiracy claim (Count Seven). Accordingly, Defendants State of Maryland and Secretary Moyer, in both his *individual* and *official* capacities, are

DISMISSED from this action. All other claims against the additional Defendants remain.

A separate Order follows.

Dated: August 22, 2017

_____/s/_____
Richard D. Bennett
United States District Judge

APPENDIX F

FILED: April 8, 2022

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 21-6423
(1:16-cv-03269-RDB)

KEVIN YOUNGER,

Plaintiff – Appellee,

v.

NEIL DUPREE,

Defendant – Appellant,

and

JEMIAH L. GREEN; RICHARD N. HANNA; KWASI H. RAMSEY; WALLACE SINGLETARY; TYRONE CROWDER,

Defendants.

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk