

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TERESA MCCLAIN BROWN-RICE :
 :
 v. : CIVIL NO. CCB-09-219
 :
 STATE OF MARYLAND, ET AL. :
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MEMORANDUM

The plaintiff Teresa Brown-Rice has filed a multitude of federal and state law claims against the State of Maryland and Troopers Justin Gross and Sean Harris arising out of her arrest for driving while under the influence of alcohol (“DWT”), assault, and related offenses on November 9, 2007. The defendants have filed a motion to dismiss, which has been fully briefed. The motion will be granted in part and denied in part as set forth below.

First, while the plaintiff refers to case no. 12K08000067 in her complaint, claiming all charges were nol prossed in the Circuit Court for Harford County, she neglected to advise this court of the guilty verdict entered as to driving or attempting to drive a vehicle while impaired by alcohol in violation of Md. Transp. Art. 21-902(b)(1). (*See* Defts. Mo. Dis. Ex. 2). That conviction establishes probable cause and bars her claims for malicious prosecution, false arrest, false imprisonment, and any other claim including lack of probable cause as an element. *See Zablonsky v. Perkins*, 187 A.2d 314, 316 (Md. 1963); *Quecedo v. DeVries*, 321 A.2d 785, 791 (Md. App. 1974).¹

¹The Fourth Circuit, in an unpublished opinion, acknowledged these principles of Maryland law. *See Asuncion v. City of Gaithersburg*, 73 F.3d 356, 1996 WL 1842, at *2 (4th Cir. 1996) (unpublished table disposition) (citing *Bussard v. Neil*, 616 F.Supp. 854, 856-57 (M.D. Pa. 1985), for the proposition that a claimant’s inability to prove an essential element of malicious prosecution under Maryland law translates to a failure of the claim brought under 42 U.S.C. § 1983).

Second, the State of Maryland and the Troopers in their official capacity are immune from money damages under the Eleventh Amendment. *See, e.g., Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997); *Gray v. Laws*, 51 F.3d 426, 430 (4th Cir. 1995); *Lewis v. Bd. of Educ. of Talbot County*, 262 F.Supp.2d 608, 612 (D. Md. 2003).

Third, it does not appear that the plaintiff complied with the Maryland Tort Claims Act, Md. Code State Gov't Art. 12-106, which will bar certain claims. *See Rivera v. Prince George's County Health Dep't*, 649 A.2d 1212, 1219-20 (Md. App. 1994).

Finally, however, it appears that the excessive force claim brought under § 1983 claiming a violation of the Fourth (or Fourteenth) amendment, *see Orem v. Rephann*, 523 F.3d 442 (4th Cir. 2008), survives a motion to dismiss, as does the similar claim under the Maryland constitution. As the case must go forward on the excessive force claims, I will not make a definitive decision as to what, if any, of the other claims related to use of force may be viable, as that can be better determined after discovery in the context of summary judgment motions.²

A separate Order follows.

June 16, 2009
Date

/s/
Catherine C. Blake
United States District Judge

² Discovery will not be permitted as to any purported claim against the State for negligent hiring or for the false arrest and other probable cause claims.