

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - December 15, 2006

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
PETER B. SKELOS
STEVEN W. FISHER, JJ.

2005-09979

DECISION & ORDER

Sophia Whyte, appellant, v City of Yonkers, et al.,
respondents, et al., defendants.

(Index No. 11316/03)

Harold Chetrick, P.C., New York, N.Y., for appellant.

Frank J. Rubino, Corporation Counsel, Yonkers, N.Y. (Mark W. Blanchard of
counsel), for respondents.

In an action, inter alia, to recover damages for false arrest, false imprisonment, and malicious prosecution, the plaintiff appeals from an order of the Supreme Court, Westchester County (Colabella, J.), entered September 16, 2005, which granted the motion of the defendants City of Yonkers, City of Yonkers Police Department, and Police Officer "John Doe" for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

The plaintiff was arrested on a single charge of disorderly conduct pursuant to Penal Law § 240.20(2), following an altercation with two police officers at a clothing shop in the City of Yonkers. The charge eventually was dismissed, after which the plaintiff commenced the present action, inter alia, to recover damages for false arrest, false imprisonment and malicious prosecution. The defendants City of Yonkers, City of Yonkers Police Department, and Police Officer "John Doe" (hereinafter collectively the defendants) moved for summary judgment dismissing the complaint insofar as asserted against them on the ground, inter alia, that probable cause existed to effectuate the plaintiff's arrest.

January 23, 2007

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A plaintiff cannot prevail on causes of action based upon false arrest, false imprisonment, and malicious prosecution if the arresting officers had probable cause to believe that he or she committed the underlying offense (*see Burns v City of New York*, 17 AD3d 305). The evidence submitted by the defendants in support of their motion established a prima facie case that the police officers did, in fact, have probable cause to effectuate the plaintiff's arrest (*see Burns v City of New York, supra*). In opposition to the motion, the plaintiff failed to raise a triable issue of fact (see CPLR 3212[b]).

The plaintiff's remaining contentions are without merit.

SCHMIDT, J.P., CRANE, SKELOS and FISHER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court