

**Williams v City of New York**

2026 NY Slip Op 31073(U)

March 18, 2026

Supreme Court, New York County

Docket Number: Index No. 153531/2020

Judge: Carol Sharpe

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. CAROL SHARPE PART 52M**

*Justice*

-----X

GARY WILLIAMS,

Plaintiff,

- v -

THE CITY OF NEW YORK, POLICE OFFICERS

Defendant.

-----X

INDEX NO. 153531/2020

MOTION DATE 05/09/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, Motion Sequence 1 is decided as follows:

Defendant The City of New York (“The City”) seeks an order granting its motion to dismiss and summary judgment pursuant to CPLR 3211, and 3212 (Motion Seq. 1). Written opposition was filed. The City’s motion is granted.

Plaintiff commenced this personal injury action on May 27, 2020, seeking damages, and maybe punitive damages, for injuries he allegedly sustained when he was arrested on July 16, 2018, for selling crack cocaine in an undercover buy operation. His claims are for wrongful arrest, forcible detention, and false imprisonment for 11 months on Riker’s Island, under both state and federal 42 USC § 1983 law. Issued was joined by the filing of the answer on July 14, 2020 (NYSCEF Doc. #3).

The City seeks dismissal of the complaint on the grounds that there was probable cause for plaintiff’s arrest; that plaintiff failed to file a timely notice of claim on the issues of malicious prosecution and negligent hiring and retention; that the 42 U.S.C. § 1983 claims were insufficiently pled, and that there was probable cause to arrest the plaintiff.

In support of its motion, The City submitted the Notice of Claim; plaintiff's deposition and 50-h transcripts; the deposition transcript of Detective Donald Hegarty; New York City Police Department ("NYPD") tactical plans reports; a photo array; the criminal indictment; the pre-arrest warrant; plaintiff's criminal case file, including the Judge's Decision and Order, and the verdict sheet.

Detective Donald Hegarty testified that he was assigned to the Narcotics Borough Manhattan South, and they made the tactical decision to focus on drug sales along Avenue D by using an undercover officer who would purchase crack cocaine from sellers. The undercover officer first purchased crack cocaine from plaintiff on July 12, 2017. Plaintiff gave the undercover officer his phone number, which the undercover officer used to arrange for plaintiff to make two more purchases of cocaine and heroin for the undercover officer on July 19, 2017. All three purchases from plaintiff were recorded by audio or video. Plaintiff was indicted but not arrested until he was arrested for a parole violation on July 16, 2018. Detective Hegarty testified that he testified at plaintiff's criminal trial and was aware that plaintiff was acquitted.

Plaintiff testified at his 50-h hearing that he was arrested on July 16, 2019, by the parole warrant squad for parole violation after not reporting to his parole officer for about four months because he was using heroin (NYSCEF Doc. #23). He was arraigned in Supreme Court because he had already been indicted, and bail was set at \$75,000.00. He was incarcerated for 11 months until the trial. He testified on his own behalf at the criminal trial and was found not guilty. After the acquittal, the hearing on the parole violation proceeded at which he testified. The outcome of the parole hearing was that his parole was revoked, and he was restored to parole. He was released into a methadone treatment program. His deposition testimony on March 15, 2022, was consistent with his 50-h testimony that he was a heroin addict. He admitted that on the day of the first sale,

July 12, 2017, as seen on the video, he helped a scruffy white man purchase heroin and the man - who turned out to be an undercover officer - gave him drugs and then took him to the store and bought him a cigarette and a can of soda. They exchanged numbers and on July 19, 2017, while he was on his way home from work, the undercover officer called him, and he purchased cocaine and heroin for the undercover officer. Plaintiff testified that he receives methadone treatment for his heroin addiction with periodic relapses and overdosed twice between 2015 and 2018. He at times gets depressed but never received treatment for it because of the arrest and incarceration stemming from the purchase of drugs for the undercover officer. Plaintiff testified that he did not suffer any physical injury during his interaction with the officers in the criminal case. Plaintiff's opposition focused on his defense at the criminal trial: that he acted as the undercover officer's agent when he purchased the narcotics for the undercover officer.

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff "the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "...[T]he question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one..." (*Chanko v Am. Broad. Cos. Inc.*, 27 NY3d 46, 52 [2016]; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus..." (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]), and "a motion to dismiss pursuant to CPLR 3211 (a) (7) must be denied "unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it" (*Guggenheimer v Ginzburg*, 43 NY2d at 275)" (*Sokol v Leader*, 74 AD3d 1180, 1182 [2nd Dept 2010]).

“The proponent of a motion for summary judgment [pursuant to CPLR 3212] must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). “Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the proponent makes the required *prima facie* showing, the burden then shifts to the opposing party, who must proffer evidence in admissible form establishing that an issue of fact exists warranting a trial (CPLR 3212(b); *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]).

“It is well established that summary judgment may not be granted whenever the pleadings raise clear, well-defined and genuine issues” (*Falk v Goodman*, 7 NY2d 87, 89 [1959]). Upon a motion for summary judgment, the role of the court is issue finding, not issue determination (*Vega v Restani Constr. Corp.*, 18 NY3d 499 [2012]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]; *Esteve v Abad*, 271 AD 725, 727 [1st Dept 1947]). The motion should be denied where different conclusions can reasonably be drawn from the evidence (*Sommer v Federal Signal Corp.*, 79 NY2d 540 [1992]). All evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party’s favor (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 [1st Dept 2010]). Issues of credibility are to be resolved at trial, not by summary judgment (*Castillo v New York City Tr. Auth.*, 69 AD3d 487 [1st Dept 2010]). For a summary judgment motion to be denied, the non-moving party must provide evidence showing that triable issues of fact exist. “To defeat summary judgment the opponent must present evidentiary facts sufficient to raise a triable issue of fact, and averments merely stating

conclusions, of fact or of law, are insufficient” (*Mallad Constr. Corp. v Cty. Fed. Sav. & Loan Ass'n*, 32 NY2d 285, 260 [1973]; *Freedman v Chem. Constr. Corp.*, 43 NY2d 260, 264 [1977])[“[I]t is elementary that conclusory assertions will not defeat summary judgment. The opponent of a properly made summary judgment motion must present evidentiary facts sufficient to raise a triable issue of fact [internal citation omitted]”). If there are no material triable issues of fact, summary judgment must be granted (*see Sillman*, 3 NY2d at 404).

Plaintiff’s causes of action alleging unlawful imprisonment and false arrest accrued upon plaintiff’s physical release from custody (*see Bumbury v City of NY*, 62 AD3d 621, 621-622 [1st Dept 2009]; *Nunez v City of NY*, 307 AD2d 218, 219 [1st Dept 2003]). “To prevail on such a cause of action, the plaintiff must demonstrate that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, that the plaintiff did not consent to the confinement and that the confinement was not privileged [internal citations omitted]” (*De Lourdes Torres v Jones*, 26 NY3d 742, 759 [2016]). A claim of false arrest and unlawful imprisonment fails where the lawful arrest is based on probable cause. “For purposes of the privilege element of a false arrest and imprisonment claim, an act of confinement is privileged if it stems from a lawful arrest supported by probable cause [internal citation omitted]. “Probable cause does not require proof sufficient to warrant a conviction beyond a reasonable doubt but merely information sufficient to support a reasonable belief that an offense has been or is being committed” by the suspected individual, and probable cause must be judged under the totality of the circumstances (*People v Bigelow*, 66 NY2d 417, 423, 488 NE2d 451, 497 NYS2d 630 [1985])” (*id.*). “Once a suspect has been indicted, however, the law holds that the Grand Jury action creates a presumption of probable cause [internal citations omitted]” (*Colon v New York*, 60 NY2d 78, 82 [1983]). “The presumption may be overcome only by evidence establishing that the police witnesses have not made a complete

and full statement of facts either to the Grand Jury or to the District Attorney, that they have misrepresented or falsified evidence, that they have withheld evidence or otherwise acted in bad faith” (*id.*, at 82-83). Plaintiff’s testimony of the three sales of narcotics is consistent with the undercover officer’s account of the facts that led to the indictment and arrest (*Sibblies v City of NY*, 219 AD3d 403, 405 [1st Dept 2023] [“Although their testimony varies as to some details, plaintiff’s account of her arrest is broadly similar to the account given by the arresting officers. Crediting plaintiff’s testimony, the minor conflicts between plaintiff’s and defendants’ accounts of the arrest do not show that defendants’ accounts were fraudulent or perjurious”]). Here, The City established that the arresting officers had probable cause to arrest plaintiff. Plaintiff failed to raise a triable issue of material fact as his account was consistent with the undercover officer’s account.

To sustain a claim of malicious prosecution, in the event plaintiff’s complaint may be interpreted as making such a claim, plaintiff must establish that “(1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice [internal citations omitted]” (*De Lourdes Torres*, 26 NY3d at 760). “Actual malice requires allegations that the City “commenced the prior criminal proceeding due to a wrong or improper motive, something other than a desire to see the ends of justice served” [internal citation omitted]” (*Burgos-Lugo v City of New York*, 146 AD3d 660, 662 [1st Dept 2017]; *Black*, 244 AD3d 404]). Applying the summary judgment analysis and giving all favorable inferences to the plaintiff, defendants have met their initial burden, but plaintiff has not met his burden of establishing a triable issue of material fact as to actual malice (*see Christian v City of NY*, 211 AD3d 402 [1st Dept 2022]). Furthermore, as discussed above, probable cause negates a

claim of malicious prosecution and the officers had probable cause to arrest the defendant as he was previously indicted by a grand jury (*see Sibblies*, 219 AD3d at 405).

“Generally, where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee’s negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention (*Eifert v Bush*, 27 AD2d 950, *affd* 22 NY2d 681). This is because if the employee was not negligent, there is no basis for imposing liability on the employer, and if the employee was negligent, the employer must pay the judgment regardless of the reasonableness of the hiring or retention or the adequacy of the training” (*Karoon v NY City Tr. Auth.*, 241 AD2d 323, 324 [1st Dept 1997]; *Troy v City of NY*, 160 AD3d 410 [1st Dept 2018]). Here, the evidence established that all NYPD officers were acting within the scope of their employment, hence the cause of action for negligent hiring and retention must be dismissed.

42 US § 1983 permits plaintiff to sue the government for violations of the laws and Constitution of the United States, and the elements of unlawful arrest and malicious prosecution are substantially the same as in state court. “[T]he government itself cannot be liable for false arrest or malicious prosecution under 42 USC § 1983 unless an official government policy, custom or widespread practice caused the violation of the plaintiff’s constitutional rights (*Monell*, 436 US at 694, 701; *Canton v Harris*, 489 US 378, 385, 109 S Ct 1197, 103 L Ed 2d 412 [1989])” (*De Lourdes Torres*, 26 NY3d at 762; *Monell v New York City Dept. of Social Servs*, 436 US 658 [1978]). Here, as under state law, probable cause defeats any claim of false arrest and malicious prosecution (*see, De Lourdes Torres*, 26 NY3d at 760 [“Indeed, the elements of those causes of action under the federal statute are substantially the same as the elements of the comparable state common-law claims, and they are evaluated in much the same way (*see Simpson v City of New*

*York*, 793 F3d 259, 265 [2d Cir 2015]; *Weyant v Okst*, 101 F3d 845, 852 [2d Cir 1996]; *Manganiello v City of New York*, 612 F3d 149, 160-161 [2d Cir 2010]; *see also Paulos v City of New York*, 122 AD3d 815, 817 [2d Dept 2014]).”]).

To sustain a *Monell* claim, plaintiff must establish that “[o]fficial municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law” (*Connick v Thompson*, 563 US 51, 61 [2011]; *Simpson v New York City Tr. Auth.*, 112 AD2d 89, 91 [1st Dept 1985], *affd* 66 NY2d 1010 [1985] [“The requirement of proof of a policy or custom is “intended to prevent the imposition of municipal liability under circumstances where no wrong could be ascribed to municipal decisionmakers.””]). Stated differently, the existence of such a policy may be shown by proof that the municipality had a custom or practice that was both widespread and reflected deliberate indifference to its citizens’ constitutional rights” (*De Lourdes Torres*, 26 NY3d at 768). “[A] section 1983 claim for damages against a state official can only be asserted against that official in his or her individual capacity”; section 1983 claims will not lie against state officials in their official capacity or under a respondeat superior theory (*Al-Jundi v Estate of Rockefeller*, 885 F2d 1060, 1065 [1989]; *Saidin v Negron*, 136 AD3d 458 [1st Dept 2016]). Instead, it was incumbent upon plaintiff to “allege particular *facts* indicating that [each of the individual defendants] was personally involved in the deprivation of the plaintiff’s constitutional rights; mere ‘bald assertions and conclusions of law’ do not suffice” (*Davis v County of Nassau*, 355 F Supp 2d 668, 677 [ED NY 2005], quoting *Leeds v Meltz*, 85 F3d 51, 53 [1996])” (*Shelton v NY State Liq. Auth.*, 61 AD3d 1145 [3d Dept 2009]; *Fowler v City of NY*, 156 AD3d 512 [1st Dept 2017]). Here, plaintiff failed to allege any specific facts in support of this cause of action that The City had a custom or practice that was both widespread and deliberate in violating individuals’

constitutional rights (see Simpson, 112 AD3d at 91). Plaintiff admitted at his deposition that on three occasions, he sold cocaine and heroin to an undercover officer. Additionally, plaintiff failed to oppose defendant’s motion to dismiss the 1983 claim (Josephson LLC v Column Fin., Inc., 94 AD3d 479, 480 [1st Dept 2012] [“Plaintiffs abandoned their remaining claims by failing to oppose the parts of defendants' motion that sought summary judgment dismissing those claims.”]).

Accordingly, it is hereby:

**ORDERED**, that the summary judgment motion filed by The City of New York is granted in its entirety; it is further

**ORDERED**, that the action is discontinued in its entirety; and it is further

**ORDERED**, that defendants shall serve a copy of this Decision and Order with Notice of Entry upon all parties within fifteen (15) days of the date herein and file proof of said service.

This constitutes the Decision and Order of the Court.

**ENTER:**

3/18/2026  
DATE

  
HON. CAROL SHARPE, J.S.C.  
**HON. CAROL SHARPE**  
J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: