

Souffrant v County of Nassau
2008 NY Slip Op 31615(U)
June 2, 2008
Supreme Court, Nassau County
Docket Number: 1512-06/
Judge: Karen Veronica Murphy
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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 22 NASSAU COUNTY**

PRESENT:

**Honorable Karen V. Murphy
Justice of the Supreme Court**

_____ x

JEAN C. SOUFFRANT,

Index No. 1512/06

Plaintiff(s),

Motion Submitted: 2/19/08

-against-

Motion Sequence: 001, 002

**THE COUNTY OF NASSAU, THE NASSAU
COUNTY POLICE DEPARTMENT, POLICE
OFFICER "JOHN DOE" DISTRICT ATTORNEY
OF NASSAU COUNTY and NASSAU COUNTY
DISTRICT ATTORNEY DENIS DILLON,**

Defendant(s).

_____ x

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....XX
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Defendants move this Court for an order pursuant to CPLR § 3212 granting them summary judgment and dismissing the complaint.

Plaintiff opposed the requested relief, with the exception of the count alleging assault, and cross moves for an order pursuant to CPLR §§ 3124 and 3126 compelling discovery and/or granting a conditional order of dismissal.

This is an action to recover damages for false arrest, false imprisonment, malicious prosecution and assault. The plaintiff was arrested by a Nassau County Police Officer on November 2, 2004 in connection with a stabbing that had occurred at 222 Urban Avenue in New Castle where both he and the victim lived. After being identified in person at the crime scene by the victim as her assailant, the plaintiff was incarcerated until November 9, 2005, on which date he was acquitted of all charges. He was allegedly detained against his will at Nassau University Medical Center until November 14, 2005, on which date he was released. This action ensued.

Defendants seek summary judgment on the grounds that the County Court found that there was probable cause for the plaintiff's arrest after a suppression hearing and the plaintiff testified at his examination-before-trial that there was no physical contact between him and the arresting officer when he was arrested. Plaintiff opposes defendants' summary judgment motion on the grounds that he was not properly identified by the victim and he was improperly detained at the hospital following his acquittal. In addition, he seeks relief pursuant to CPLR §§ 3124 and 3126 based upon allegedly outstanding discovery, more specifically, a file referred to by Detective Occhino at his examination-before-trial, which has yet to be produced, the contents of which defendant alleges are "critical" in his prosecution of this action.

"On a motion for summary judgment pursuant to CPLR § 3212, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Sheppard-Mobley v. King*, 10 A.D.3d 70, 74, 778 N.Y.S.2d 98 (2d Dept., 2004), *aff'd* as mod., 4 N.Y.3d 627 (2005), citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853, 476 N.E.2d 642, 487 N.Y.S.2d 316 [1985]). "Failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." (*Sheppard-Mobley v. King, supra*, at p. 74; *Alvarez v. Prospect Hosp., supra*; *Winegrad v. New York Univ. Med. Ctr., supra*). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact. (*Alvarez v. Prospect Hosp., supra*, at p. 324). The evidence presented by the opponents of summary judgment must be accepted as true and they must be given the benefit of every reasonable inference. (See, *Demshick v. Community Housing Management Corp.*, 34 A.D.3d 518, 824 N.Y.S.2d 166 [2d Dept., 2006]).

Without opposition, the cause of action alleging assault is dismissed. There is nothing before this Court to establish the plaintiff was injured in any way.

To establish a cause of action for false arrest and/or imprisonment, a plaintiff must establish that the defendant intentionally and without right arrested or took custody of him without his consent. (*Lee v. City of New York* , 272 A.D.2d 586, 709 N.Y.S.2d 102 (2d Dept., 2000); citing *Broughton v. State* , 37 N.Y.2d 451, 456 (1975), cert den. sub nom., *Schanbarger v. Kellogg*, 423 US 929 [1975]). To establish a claim for malicious prosecution, a plaintiff must establish the initiation of a proceeding; a termination in his favor; a lack of probable cause; and, malice. (*Du Chateau v. Metro-North Commuter R. Co.*, 253 A.D.2d 128, 688 N.Y.S.2d 12 (1st Dept., 1999), citing *Colon v. City of New York*, 60 N.Y.2d 78, 82 (1983), rearg den., 61 N.Y.2d 670 [1983]). Accordingly, the plaintiff must establish a lack of probable cause as an element of all of his remaining causes of action.

Unlawfulness is presumed where an arrest and detention occur without a warrant, and the burden falls on defendant to establish "justification, including 'reasonable cause' " when false arrest and/or false imprisonment are alleged. (*Smith v. County of Nassau*, 34 N.Y.2d 18, 23, 311 N.E.2d 489, 355 N.Y.S.2d 349 [1974]). "Since the lack of probable cause is also an essential element of malicious prosecution, [a] dispositive issue [there] . . . is [also] whether there was probable cause, as a matter of law, to arrest plaintiff." (*Saunders v. County of Washington*, 255 A.D.2d 788, 789, 680 N.Y.S.2d 743 [3d Dept., 1998]). Probable cause is a complete defense to an action alleging false arrest or false imprisonment, (*Carlton v. Nassau County Police Dept.*, 306 A.D.2d 365, 366, 761 N.Y.S.2d 98 (2d Dept., 2003); see also, *Martinez v. City of Schenectady*, 97 N.Y.2d 78, 85, 761 N.E.2d 560, 735 N.Y.S.2d 868 (2001), as well as a claim for malicious prosecution (*Mucius v. County of Nassau* , 288 A.D.2d 276, 733 N.Y.S.2d 458 [2d Dept., 2001]).

The County Court's finding of probable cause after the suppression hearing is not entitled to collateral estoppel effect here. (*Williams v. Moore*, 197 A.D.2d 511, 602 N.Y.2d 199 [2d Dept., 1993]). The plaintiff was unable to seek appellate review of that pretrial determination and it accordingly was not "sufficiently final to be accorded collateral estoppel effect" in this action. (*Williams v. Moore, supra*, at p. 513, quoting *People v. Howard*, 152 A.D.2d 325, 329, 548 N.Y.S.2d 785 (2d Dept., 1989), appeal denied 75 N.Y.2d 814 [1990]).

"Probable cause is defined as 'such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe that plaintiff had committed the [crime].'" (*Saunders v. County of Washington, supra*, at p. 790, quoting *Smith v. County of Nassau, supra*, at p. 25). Probable cause may be decided by the court as a matter of law "only where there is no real dispute as to the facts or the proper inferences to be drawn from such facts." (*Parkins v. Cornell University, Inc.*, 78 N.Y.2d 523, 529, 583 N.E.2d 939, 577 N.Y.S.2d 227 [1991]). "[A]s a general rule, information provided by an identified citizen accusing another individual of the commission of a specific crime is sufficient to provide the police with probable cause to arrest." (*Carlton v. Nassau County Police Department*,

supra). However, "[t]he failure to make further inquiry when a reasonable person would have done so may be evidence of lack of probable cause." (*Carlton v Nassau County Police Department, supra*, at p. 366, citing *Colon v. City of New York, supra*. "Where there is 'conflicting evidence, from which reasonable persons might draw differing inferences . . . the question is for the jury.'" (*Parkins v. Cornell University, Inc., supra*, at p. 592, quoting *Veras v. Truth Verification Corp.*, 87 A.D.2d 381, 451 N.Y.S.2d 761 [2d Dept., 1982]).

The arresting officer Kenny Rodriguez testified at his examination-before-trial that on November 1, 2004, he received a radio call to respond to a stabbing incident on Urban Avenue in New Castle. When he encountered the victim, she told him that she had been stabbed by a man who lived in the basement of her building who was related to her landlord. Officer Rodriguez testified that the victim spontaneously identified the plaintiff when he arrived at the scene on his bicycle by shouting "there he is." After talking with the victim and having her unequivocally identify the plaintiff, he arrested him.

The victim's spontaneous in-person identification of plaintiff provided the arresting officer with the requisite probable cause to arrest him. The plaintiff's denial of the sequence of events as testified to by the arresting officer and attested to by the victim in her supporting deposition, under the circumstances, does not raise an issue of fact with respect to the existence of probable cause. "Information provided by an identified citizen accusing another individual of a specific crime is legally sufficient to provide the police with probable cause to arrest." (*People v. Nieves*, 26 A.D.3d 519, 809 N.Y.S.2d 586 (2d Dept., 2006), citing *People v. Ross*, 11 A.D.3d 641 (2d Dept., 2004); *People v. Rogers*, 245 A.D.2d 395, 666 N.Y.S.2d 440 (2d Dept., 1997); *People v. Pagan*, 184 A.D.2d 738, 585 N.Y.S.2d 453 [2d Dept., 1992]). "An accusation against a specific individual from the eyewitness-victim of a crime, is sufficient, absent materially impeaching circumstances, to establish probable cause to believe the offense was committed and that the identified perpetrator committed the crime." Barry Kamins, *New York Search and Seizure* § 1.02(2)(b), at 1-78 (2007 ed.). "[W]hether the victim's account is true or false, its mere reporting justifies the police in arresting the alleged perpetrator." (*People v. Sanchez*, 16 Misc.3d 1110(A), 847 N.Y.S.2d 898 (N.Y. City Crim. Ct. 2007), citing *People v. Hicks*, 38 N.Y.2d 90, 92, 341 N.E.2d 227, 378 N.Y.S.2d 660 [1975]; *People v. Nieves, supra*).

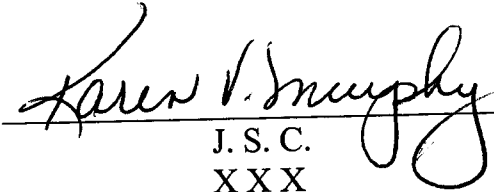
With respect to the claim for false imprisonment, there is no evidence that any of the named defendants participated in falsely imprisoning Plaintiff while he was at Nassau University Medical Center following his acquittal. As Nassau University Medical Center is not a party to this action, there is no basis for this Court to sustain an action for false imprisonment under these circumstances.

Defendants' motion for summary judgment is granted in its entirety and the complaint is dismissed.

As for defendant's motion to compel discovery or strike the defendants' Answer, this request is untimely and in any event denied as moot.

The foregoing constitutes the Order of this Court.

Dated: June 2, 2008
Mineola, N.Y.



J. S. C.
XXX

ENTERED

JUN 09 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**