

Murphy v City of New York

2015 NY Slip Op 32744(U)

December 11, 2015

Supreme Court, Bronx County

Docket Number: 21195/2014

Judge: Mary Ann Brigantti

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**SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15**

PRESENT: Honorable Mary Ann Brigantti

-----X
STEPHANIE MURPHY,

Plaintiff,

-against-

THE CITY OF NEW YORK, et als.,

DECISION / ORDER

Index No. 21195/2014

Defendants
-----X

The following papers numbered 1 to 5 read on the below motion noticed on July 16, 2015 and duly submitted on the Part IA15 Motion calendar of **August 27, 2015**:

<u>Papers Submitted</u>	<u>Numbered</u>
City's Notice of Motion, Exhibits	1,2
Pls.' Opposition, Exhibits	3,4
City's Aff. In Reply	5

Upon the foregoing papers, defendants City of New York (the "City") and Police Officer Khaleeq Millington (individually, "Officer Millington") (collectively, "Defendants") move for summary judgment, dismissing the complaint of the plaintiff Stephanie Murphy ("Plaintiff"), pursuant to CPLR 3212. Plaintiff opposes the motion.

I. Background

This action arises out of an alleged incident that took place on July 30, 2013, at approximately 5:30 PM on the Number 5 New York City subway train in the vicinity of the Dyer Avenue Station in the Bronx, New York. Plaintiff testified that she was traveling on the train when she walked from one car to another by passing through the train car's end doors. After passing through the door and into the adjacent car, she was approached by defendant Officer Millington who asked her to step off the train at the next stop. At the stop, the officer requested Plaintiff's identification, and she complied. The officer asked her if she had any outstanding warrants, and she told him no. Plaintiff testified that the officer then "ran [her] name" and she heard the precinct come back on the radio and tell him that Plaintiff had no warrants. The officer then "called again, asked somebody else, they told him the same thing," that she had no

outstanding warrants. The officer then told Plaintiff that she was under arrest and placed handcuffs on her. Plaintiff asked why she was being arrested, but the officer simply said that she was under arrest and would have to wait until she arrived at the police station. Plaintiff was thereafter taken to the police precinct on 180th Street where she was searched by a female officer, placed in a cell alone, and processed. Plaintiff testified that she was never taken to Central Booking or given any ticket. Later that day, the Office of the District Attorney declined to prosecute the Plaintiff and she was released. While Plaintiff testified that she was emotionally affected by this incident, she does not alleged that any officer physically harmed her in any way. At the time when Plaintiff passed through the train car door, there was no emergency situation, and she was not directed to go through the doors by a police officer or Metropolitan Transit Authority (“MTA”) employee.

Defendant Officer Millington appeared for deposition. He testified that he was on the number 5 subway train running from Dyer Avenue to 180th Street in the Bronx when he observed Plaintiff enter his train car from another car by using the end door. Officer Millington testified that he explained to Plaintiff that she could not go between the train cars without permission of a police officer or MTA worker. He believed that there are signs on the car doors stating that individuals are not allowed to move between the cars. The defendant testified that he then placed the Plaintiff under arrest for violating a “transit code” and transported her to the local police precinct. When asked at his deposition why he arrested Plaintiff instead of issuing a ticket, he initially testified that he “ran her name” and discovered that she was “a transit recidivist” and therefore ineligible for a ticket. Later in the deposition, however, Officer Millington conceded that he did not know what Plaintiff had done in the past that prevented him from issuing her a ticket instead of arresting her. Officer Millington confirmed that Plaintiff was not thereafter issued a ticket or summons.

An “Affidavit in Support of Declining/Deferring Prosecution” from the District Attorney’s Office states under “reason(s) for declining /deferring prosecution” that Plaintiff was “charged with violating NYCRR 1050.9(d) which is a summonsable offense and the People are declining to prosecute.” The affidavit explains that the People declined to prosecute because the offense does not allow for the sentence of 15 days incarceration or more.

Plaintiff subsequently brought this action against Defendants alleging (1) Federal and State law claims for false arrest and false imprisonment; (2) assault and battery pursuant to state law; (3) negligence and negligent hiring, training, and retention; (4) a Federal claim of municipal liability under 42 U.S.C. §1983; and (5) intentional infliction of emotional harm. Defendants argue that Plaintiff's Federal and State Law claims for false arrest and false imprisonment must be dismissed because probable cause existed to arrest Plaintiff as a matter of law. It is undisputed that Officer Millington observed Plaintiff move between the subway cars in violation of 22 NYCRR §1059.9(d). Such a violation is punishable by a monetary fine or a term of imprisonment of not longer than ten days, or both. At the time, there was no emergency, and the officer did not see another officer or MTA employee direct Plaintiff to use the end doors of a subway car to pass from one car to another. Further, Plaintiff admitted that she used the doors to pass between the subway cars simply to find a seat on the adjacent car. A police officer is authorized to arrest an individual who commits an offense in his presence (CPL §140.10[1][a]). Since the officer had probable cause to arrest Plaintiff, her Federal claims pursuant to 42 U.S.C. §1983, and State law claims for false arrest and false imprisonment must be dismissed. Defendants further argue that Plaintiff's claims of assault and battery under state law, and excessive force under federal law, must be dismissed because it is not disputed that the officers only used the minimal amount of force necessary to place plaintiff under arrest. Officer Millington possessed probable cause to arrest Plaintiff and therefore as a matter of law, any involved officer was permitted to use the appropriate degree of force to effectuate the arrest.

Defendants assert that Plaintiff's Federal claims of municipal liability against the City must be dismissed because she has failed to establish an underlying constitutional violation or discover any facts or evidence to support such a cause of action. Plaintiff's constitutional rights here were not violated because her arrest was privileged, and she was not subjected to the use of force. Further, Plaintiff's complaint fails to specifically allege any unconstitutional policy, custom, pattern, or practice by the New York City Police Department. The complaint appears to attempt to impose municipal liability upon a theory of *respondeat superior*, which is disallowed. Finally, Defendants argue that Plaintiff's claims for intentional infliction of emotional distress, and state law causes of action alleging negligence and negligent hiring, training, and retention

must be dismissed.

Plaintiff opposes the motion. At the outset, Plaintiff concedes that her claims of assault, negligent retention and hiring, intentional infliction of emotional stress, and malicious prosecution claims, as well as 42 USC §1983 claims asserted against the City, are not sustainable and should be dismissed. Plaintiff asserts that there are issues of fact requiring denial of the motion as to her claims of battery, false arrest, unlawful imprisonment, and 42 USC §1983 claims as to the individual defendant, Officer Millington. As borne out in the record, Officer Millington did not charge the Plaintiff with any crime or violation after he arrested her. Instead, he later apologized to Plaintiff and allowed her to leave out of a side door to the precinct. Plaintiff asserts that the officer either did not have a valid reason, or had unlawful or improper reasons for arresting her. Officer Millington conceded at deposition that no “transit ticket” or any criminal summons or complaint was issued to Plaintiff. Further, there is no entry in any police document that lists a violation. Plaintiff provides the arrest report which contains an unspecified “default” charge of LOC 000.00 OV. The affidavit from the District Attorney’s office lists a “charge” of “NYCRR 1050.4(c),” which appears to have no relation to these facts. The affidavit cites a different code in its explanation as to why the office declined to prosecute. Moreover, even after being “instructed” by the District Attorney to issue a summons for this alleged infraction, none was ever issued by the Defendants. Plaintiff asserts that Officer Millington knew, or should have known that Plaintiff could not be prosecuted for this offense and he should have given her a summons, at most. While the officer testified that he was informed Plaintiff was a “transit recidivist,” there is no evidence of that in the record. Moreover, Officer Millington allegedly told Plaintiff not to ask the front desk officers at the precinct why she was being arrested. He ultimately conceded at his deposition that he did not “run” Plaintiff’s name at the time of the arrest, and did not know what Plaintiff had done in the past that would have prevented her from getting a ticket instead of being arrested. Plaintiff argues that Officer Millington had no probable cause or legal basis for arresting Plaintiff and therefore her claims asserted under 42 USC §1983, false arrest, unlawful imprisonment, and battery, must not be dismissed.

II. Standard of Review

To be entitled to the “drastic” remedy of summary judgment, the moving party “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 from the case.” (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers. (*Id.*, see also *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v. 46th Street Development LLC.*, 101 A.D.3d 490 [1st Dept. 2012]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). When deciding a summary judgment motion the role of the Court is to make determinations as to the existence of bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499 [2012]). If the trial judge is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied. (*Bush v. Saint Claire’s Hospital*, 82 N.Y.2d 738 [1993]).

III. Applicable Law and Analysis

Plaintiff admits that the claims of assault, negligent retention and hiring, intentional infliction of emotional distress, malicious prosecution, and 42 USC §1983 claims asserted against the City should be dismissed. Plaintiff’s remaining claims are “battery, false arrest, unlawful imprisonment, and 42 USC 1983 against the individual defendant P.O. Millington.” A plaintiff asserting claims for false arrest and false imprisonment must demonstrate that: the defendant intended to confine the plaintiff; the plaintiff was conscious of the confinement; the plaintiff did not consent to the confinement; and the confinement was not otherwise privileged (*see Martinez v. City of Schenectady*, 97 N.Y.2d 78, 85 [2001]). “In New York, the tort of false arrest is synonymous with false imprisonment” (*Posr v. Doherty*, 944 F.2d 91, 96 [2nd Cir. 1991]). The existence of probable cause is a legal justification for the arrest, and a complete

defense to the claim of false arrest and false imprisonment (*see Gisondi v. Town of Harrison*, 72 N.Y.2d 280 [1988]; *Broughton v. State of New York*, 37 N.Y.2d 451, 458 [1975]). To establish probable cause for an arrest, proof beyond a reasonable doubt is not required, “but merely information sufficient to support a reasonable belief that an offense has been ... committed” (*see Marrero v. City of New York*, 33 A.D.3d 556 [1st Dept. 2006], quoting *People v. Bigelow*, 66 N.Y.2d 417, 423 [1985]). In determining whether a police officer had probable cause to effect an arrest, a court must consider “all of the facts and circumstances together” (*Id.* [internal citations omitted]). Probable cause may be decided as a matter of law where there is “no real dispute as to the facts or the proper inferences to be drawn from such facts” (*see Parkin v. Cornell Univ., Inc.*, 78 N.Y.2d 523 [1991]). Where, as here, an arrest occurs without a warrant, the presumption arises that the arrest and imprisonment are unlawful (*Broughton*, 37 N.Y.2d at 458). The burden is on the defendants to prove that the arrest was based on probable cause (*see Medina v. City of New York*, 102 A.D.3d 101, 103 [1st Dept. 2012]).

In this matter, Defendants here have satisfied their initial burden of proving that Officer Millington had probable cause to arrest and detain Plaintiff. Under Criminal Procedure Law §140.10(1)(a), a police officer is authorized to arrest a person without a warrant for “[a]ny offense which he has reasonable cause to believe that such person has committed such offense in his presence...” The term “reasonable cause” has been equated with “probable cause” (*see People v. Lombardi*, 18 A.D.2d 177, 180 [2nd Dept. 1963], *aff’d*, 13 N.Y.2d 1014 [1963]). Here, it is not disputed that Plaintiff walked between the subway cars in violation of 22 NYCRR §1050.9(d), and that Officer Millington observed her doing so. 22 NYCRR §1050.9(d) provides: ‘No person may ride on the roof, platform between subway cars or on any other area outside any subway car or bus or other conveyance operated by the authority. No person may use the end doors of a subway car to pass from one subway car to another except in an emergency or when directed to do so by an authority conductor or a New York City police officer.’ It is undisputed that there was no ongoing emergency at the time of this incident, and that Plaintiff was not directed to walk through the door by a police officer or MTA worker. Officer Millington, therefore, had probable cause to arrest Plaintiff (*see Chevalier v. City of New York*, No. 11 Civ. 1511 [S.D.N.Y. Oct. 12, 2011]).

In opposition, Plaintiff has failed to raise an issue of fact. Plaintiff posits that Officer Millington had ulterior motives for making the arrest, in light of the fact that he allegedly apologized and offered certain benefits to Plaintiff after she was released. Even accepting these allegations as true, however, “an officer’s subjective state of mind (except for the facts that he knows) is irrelevant to the issue of probable cause” (*Devenpeck v. Alford*, 543 U.S. 146, 153 [2004];). Moreover, “[a] valid arrest will not be rendered unlawful by malicious motives...” (*Broughton*, 37 N.Y.2d at 459). Plaintiff contends that since she was never actually charged with a crime, issued a summons or desk appearance ticket, or sent to central booking, there was no basis to make the arrest. However, as noted above, it is not disputed that Plaintiff was observed walking between the subway cars before she was arrested.

Plaintiff also argues that the motion must be denied because the officer should have known that this was “not a prosecutable offense” and he should have, at most, issued Plaintiff a summons. Plaintiff contends that the officer’s understanding that Plaintiff was a “transit recidivist” was erroneous, and the officer ultimately conceded that he did not “run her name” before the arrest and did not know what Plaintiff did to prevent him from offering a ticket. These arguments, however, are unavailing, because “a police officer’s authority to effect a custodial arrest for a violation, other than a minor vehicular offense (see *People v. Marsh*, 20 N.Y.2d 98, 228 N.E.2d 783 [1967]), remains valid even where the officer has the option of issuing a summons instead” (*People v. Rodriguez*, 84 A.D.3d 500, 501 [1st Dept. 2011], citing *People v. Lewis*, 50 A.D.3d 595 [1st Dept. 2008], *lv. den.*, 11 N.Y.3d 790 [2008]). Moreover, the fact that Plaintiff was told the reason she was under arrest did not render the it unlawful. “While it is assuredly good police practice to inform a person of the reason for his arrest at the time he is taken into custody, [this is not] constitutional required” (*People v. Hampton*, 44 A.D.3d 1071 [2nd Dept. 2007], quoting *Devenpeck v. Alford*, 543 U.S. 146, 155 [2004]; *cf.* CPL 140.15[2]).

Accordingly, since Officer Millington had probable cause to arrest Plaintiff, her causes of action for false arrest, unlawful imprisonment, and constitutional claims under 42 U.S.C. §1983 must be dismissed (see *Garcia v. City of New York*, 115 A.D.3d 447 [1st Dept. 2014]).

Plaintiff’s remaining claim of battery must also be dismissed. Defendants had probable cause to effectuate the arrest, and the record is devoid of any evidence that excessive force was

used (*see Marrero v. City of New York*, 33 A.D.3d 556, 557 [1st Dept. 2006]).

IV. Conclusion

Accordingly, it is hereby

ORDERED, that Defendants' motion for summary judgment is granted, and it is further,

ORDERED, that Plaintiff's complaint is dismissed with prejudice.

This constitutes the Decision and Order of this Court.

Dated: 12/11, 2015



Hon. Mary Ann Brigantti, J.S.C.