

<b>Brown v City of New York</b>
2017 NY Slip Op 30393(U)
January 6, 2017
Supreme Court, Bronx County
Docket Number: 301605/13
Judge: Elizabeth A. Taylor
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, I.A.S. PART 2  
JASON BROWN,

Plaintiff,

Index No. 301605/13

**DECISION/ORDER**

-against-

**Present:**  
**HON. ELIZABETH A. TAYLOR**

THE CITY OF NEW YORK, NEW YORK CITY  
POLICE DEPARTMENT, POLICE OFFICER  
JOHN DOE,

Defendant(s)

The following papers numbered 1 to \_\_\_ read on this motion, \_\_\_\_\_

No	On Calendar of	PAPERS NUMBERED
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1-2
	Answering Affidavit and Exhibits-----	3
	Replying Affidavit and Exhibits-----	4
	Affidavit-----	
	Pleadings -- Exhibit-----	
	Stipulation -- Referee's Report --Minutes-----	
	Filed papers-----	

Upon the foregoing papers, this motion has been referred to me for disposition by the Supreme Court Justice at I.A.S. Part 3, pursuant to the published rules of I.A.S. Part 3 and the Administrative Judge.

Motion pursuant to CPLR 3212 and 3211(a)(7) for an order dismissing the complaint, is granted.

Plaintiff commenced this action on March 8, 2013, seeking damages for injuries allegedly sustained when he was arrested, charged with, *inter alia*, kidnapping, robbery, rape and assault, and the charges were later dismissed.

The basis of plaintiff's arrest stems from a complaint by his former girlfriend, Essence Sanchez. Movant alleges that prior to plaintiff's arrest on December 9, 2011, Ms. Sanchez, submitted a sworn Domestic Incident Report to the 50<sup>th</sup> precinct. In the statement, she claimed, *inter alia*, that as she walked out of a store in Bronx County on

December 6, 2011, she saw the plaintiff with a knife on his side. He allegedly pulled her by her hair and put her in a choke hold, which caused her to blackout. When she regained consciousness, they were in a cab which brought them to a hotel. When they got to the hotel room, he assaulted and threatened her throughout the day and told her not to leave or he would kill her parents and grandparents. Ms. Sanchez averred that for the next two days, plaintiff forced her to have sex with him. When they "ran out of money," plaintiff grabbed Ms. Sanchez and they went in a cab to her grandmother's house to get more money. When the cab pulled up to the grandmother's house, Ms. Sanchez tried to run away and plaintiff put her in a choke hold but she managed to grab his groin and run to her grandmother's house. At the precinct, photos were taken of Ms. Sanchez' injuries and a rape kit was completed. After, plaintiff's arrest, Ms. Sanchez signed an Accusatory Instrument alleging that plaintiff violated various provisions of the Penal Law, including kidnapping, robbery, rape and assault.

After the District Attorney's office discovered several discrepancies and unexplained facts, Ms. Sanchez admitted to fabricating the story and the District Attorney dismissed charges.

In his Notice of Claim, plaintiff alleges:

On 12/09/11, without justification or provocation and without a warrant, NYPD officers accosted, battered, arrested, confined, unduly restrained and wrongfully prosecuted [him]. [Plaintiff] was arrested and held for over six (6) days before felony charges were dismissed on the [CPL] 180.80 day. After more than five

months of incarceration [the] case was dismissed by the prosecution and he was released from custody on 4/5/12.

It is noted that in his complaint, plaintiff lists six headings, enumerating them as "AS AND FOR A FIRST CAUSE OF ACTION" through "AS AND FOR A SIXTH CAUSE OF ACTION." Although plaintiff did not delineate his causes of action, the court culled from the Complaint that he is suing the defendants for malicious prosecution, false arrest or false imprisonment, assault and battery, excessive force, negligent supervision and violation of his Fourth Amendment rights to be free from unreasonable search and seizure.

The City of New York moves: 1) pursuant to CPLR 3212, for an order dismissing plaintiff's complaint; 2) pursuant to CPLR 3212 and GML §§ 50-e and 50-i, for an order dismissing all state law claims for plaintiff's failure to satisfy a condition present to suit; and 3) pursuant to CPLR 3211(a)(7) and (8), for an order dismissing the complaint against NYPD as it is a non-suable entity.

Plaintiff does not oppose the portions of the motion to dismiss: 1) "the state law claim of excessive force, assault and battery;" 2) "the state law claim of negligent hiring, retention, and training;" and 3) the "claims against the NYPD as it is not a suable entity." Accordingly, plaintiff's claims for assault and battery, excessive force and negligent supervision are dismissed. Plaintiff's remaining claims are for malicious prosecution, false arrest or false imprisonment, and violation of his Fourth Amendment rights to be free from unreasonable search and seizure.

In opposition, plaintiff's attorney argues that his claims are timely and that movant is not entitled to summary judgment on the claims false arrest and malicious prosecution, as issues of fact exist as to whether the defendants had probable cause for the arrest. Plaintiff notes that movant did not seek "to dismiss any of plaintiff's federal claims including the 42 U.S.C. § 1983 claim based upon policies and customs used by defendants.

"A cause of action for malicious prosecution accrues when the criminal proceeding terminates favorably to plaintiff . . . On the other hand, a cause of action for unlawful imprisonment accrued 'when the confinement terminates'" (*Bumburg v City of New York*, 62 AD3d 621[1st Dept. 2009]; see *Nunez v City of New York*, 307 AD2d 218 [1st Dept. 2003]).

It is undisputed that: 1) all criminal charges that are the basis of this lawsuit were dismissed and plaintiff was released from the custody of the New York City Department of Corrections, on March 2, 2012; 2) plaintiff was released from an immigration hold by the United States Department of Homeland Security Immigration and Customs Enforcement on April 5, 2012; and 3) plaintiff filed a Notice of Claim on June 25, 2012. Therefore, plaintiff's cause of action for malicious prosecution accrued on March 2, 2012, the date the charges were dismissed, and the claims for false arrest or false imprisonment accrued on March 2, 2012, the date when plaintiff was released from confinement.

The malicious prosecution claim must be dismissed as the Notice of Claim was

not filed on May 31, 2012, 90 days after the charges were dismissed, and the action was commenced beyond the one year statute of limitations.

The false arrest or false imprisonment claim is timely as the Notice of Claim was filed before the 90 day deadline of July 4, 2012 and before the one year statute of limitations expired for this claim.

In response to the 42 U.S.C. § 1983 claim, movant correctly argues that the City did not address it “. . . since it was not apparent on the face of the complaint that plaintiff intended to pursue such a claim.”

Even if this court were to find that plaintiff brought a cause of action for violation of 42 USC § 1983, the claim must be dismissed for failure to demonstrate that the actions, if wrong, taken by its police officers resulted from official municipal policy or custom (*Delgado v. City of New York*, 86 A.D.3d 502 [1st Dept. 2011]; *Leftenant v. City of New York*, 70 A.D. 3d 596, 597; *Monel v. Dept. of Social Serv. of City of N.Y.*, 436 U.S. 658, 690-691(1978). Further, a single incident of objectionable conduct committed by the police department is insufficient to establish the existence of policy or custom for Section 1983 purposes. *Dillon v. Perales*, 181 A.D.2d 619 [1st Dept. 1992]).

Probable cause does not require proof of guilt beyond a reasonable doubt, but merely that it was reasonable to believe that a crime had been committed (*Agront v City of New York*, 294 AD2d 189 [1st Dept 2002]). “When determining whether the police had probable cause to arrest, the ‘inquiry is . . . to the sufficiency for arrest purposes of the grounds for the arresting officer’s *belief* that [the defendant] was guilty”

(*People v Shulman*, 6 NY3d 1, 25-25 [2005], quoting *People v Coffey*, 12 NY2d 443, 452 [1963]).

It is undisputed that the arresting officer arrested plaintiff in response to an assault in progress. Although it appears that plaintiff may be alleging that Ms. Sanchez' mother, a retired police officer, influenced Police Officer LaBianca to arrest plaintiff without probable cause, plaintiff has failed to submit proof of the scheme or to rebut movant's claims of why the arrest of plaintiff was effected. Plaintiff's different version of what took place goes to whether there was proof beyond a reasonable doubt for the charges and not whether there was probable cause for the arrest.

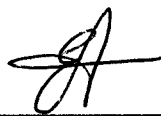
As this court finds that there was probable cause for the arrest, the false arrest or false imprisonment claim is dismissed. The malicious prosecution claim, if it were brought timely, would also fail.

The Clerk is directed to dismiss the action, accordingly.

The foregoing shall constitute the decision and order of this court.

Dated:

JAN 06 2017



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A.J.S.C.