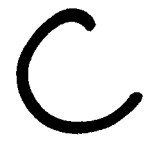


Lindo v City of New York
2018 NY Slip Op 30327(U)
January 10, 2018
Supreme Court, Bronx County
Docket Number: 300765/14
Judge: Elizabeth A. Taylor
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JAN 16 2018



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 2
JAMMAL LINDO and NORMAN EDWARDS,
Plaintiffs,

Index No. 300765/14

DECISION/ORDER

-against-

Present:
HON. ELIZABETH A. TAYLOR

THE CITY OF NEW YORK, et al.,
Defendants.

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-----	_____
	Answering Affidavit and Exhibits-----	_____
	Replying Affidavit and Exhibits-----	_____
	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.

Plaintiffs commenced this action on or about February 11, 2014, seeking damages for injuries allegedly sustained when they were arrested, charged with Criminal Possession of a Weapon in the second degree, and the charges were later dismissed. It is noted that plaintiff Jammal Lindo was issued a summons for reckless driving, which he subsequently pled guilty to.

On August 3, 2013, members of the New York Police Department ("NYPD") stopped plaintiff Jammal Lindo's vehicle, while he was driving with three passengers, including plaintiff Norman Edwards in the front passenger seat, and Delano Brown and

Parron Bradley in the back seats. It is undisputed that Mr. Bradley had two or three firearms in a bag when he entered the vehicle. Plaintiffs allege that they were unaware of the contents in Mr. Bradley's bag prior to being pulled over by the police officers. Plaintiffs and the two passengers were arrested and transported to the precinct and then to central booking. The grand jury did not return a true bill. The charges against plaintiffs were dismissed on August 20, 2013.

P.O. Crain testified that prior to the stop, he observed plaintiffs' vehicle cut over the double yellow lines in the street and almost swipe a livery cab while driving at a high rate of speed. P.O. Fernandez testified that when he approached the vehicle, he observed the driver and the individuals in the rear dipping their shoulders down and making a lot of movement in the vehicle. P.O. Fernandez further testified that as he was speaking to the driver of the vehicle, he observed the handle of a firearm sticking out from under the driver's seat in plain view.

Defendants move to dismiss: 1) plaintiffs' state and federal law claims of false arrest and false imprisonment, as there was probable cause to arrest and detain plaintiffs; 2) plaintiffs' state and federal law claims of malicious prosecution, as there was probable cause to prosecute plaintiffs and as there is no evidence that their prosecution was conducted with actual malice; and 3) plaintiffs' state and federal law claims of excessive force and battery, as plaintiffs were merely handcuffed during the course of their lawful arrests.

A warrantless arrest is presumptively invalid and raises a presumption of lack of

probable cause. *Lawson v. City of New York*, 83 A.D.3d 609 (1st Dept. 2011).

However, a claim for false arrest and imprisonment may be defeated by proving legal justification for the arrest, which “may be established by showing that the arrest was based on probable cause” (*Broughton* at 458; *Martinez v. City of Schenectady*, 97 N.Y.2d 78, 95 (2001); *Rivera v. County of Nassau*, 83 A.D.3d 1032 (2011)); which is a complete defense to claims of false arrest and imprisonment and malicious prosecution, under both state and federal standards. *Lawson v. City of New York*, 83 A.D.3d 609 (1st Dept. 2011)); *Narvaez v. City of New York*, 83 A.D.3d 516 (1st Dept. 2011); *Leftenant v. City of New York*, 70 A.D.3d 596 (1st Dept. 2011). Further, probable cause for the criminal proceeding, defeats a malicious prosecution claim. *Broughton v. State of New York*, 37 N.Y.2d 451, 457 (1975).

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]).

Police officer Crain testified that prior to the stop of plaintiff’s vehicle, the NYPD vehicle and plaintiffs’ vehicle were stopped at a red traffic light, facing Westbound, and when the traffic light turned green, plaintiffs’ vehicle passed the NYPD vehicle at a high

rate of speed. He further testified that the target vehicle “cut over the double yellow lines, and [it] almost side swiped a livery cab. At that time [the officers] took off to follow them.” Lieutenant Camhi testified that prior to the stop, he saw “ a vehicle approximately at 149th and Jackson Avenue, [] facing the Westbound direction and it abruptly pulled into traffic nearly side swiping a livery vehicle forcing oncoming traffic.” He further testified that he did not recall the direction of the police vehicle on that road, but he believes that NYPD vehicle was on the opposite side of the street when they first observed plaintiffs’ vehicle. Police Officer Fernandez testified the NYPD vehicle was traveling Eastbound and the NYPD vehicle made a U-turn to pursue the target vehicle. Mr. Lindo testified that prior to the stop, he was driving Mr. Parron to the precinct. He further testified that there was a car doubled parked, so he put on his left turn signal to change his lane. He did not remember the speed limit but he alleges that he was not “going fast at all.”

It is undisputed that Mr. Lindo pled guilty to reckless driving, which eliminates any question as to whether the traffic stop was lawful. The officers’ testimony that weapons were in plain view, is uncontradicted. Accordingly, the branch of defendants’ motion to dismiss plaintiffs’ federal and state false imprisonment, false arrest, and malicious prosecution claims, is granted.

The existence of probable cause does not bar a cause of action sounding in assault and battery based upon excessive force (*Bennett v New York City Housing Authority*, 245 AD2d 254 [2d Dept 1997]). There is no evidence demonstrating that the

force used by the officers, based on a reasonable officer on the scene, was excessive. Accordingly, the branch of defendants' motion to dismiss plaintiffs' claims for excessive force and battery, granted.

It is noted that the defendants did not move to dismiss plaintiffs' "claims alleging negligent hiring, training and supervision," as mentioned in the reply affirmation. Therefore, the court did not address this issue.

The Clerk is directed to dismiss the action, accordingly.

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

Dated: JAN 10 2018



A.J.S.C.

Elizabeth A. Taylor