

Segundo v City of New York

2018 NY Slip Op 30562(U)

March 28, 2018

Supreme Court, New York County

Docket Number: 159780/2015

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 52

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SAYSHA SEGUNDO,

Plaintiff,

Index No.: 159780/2015

-against-

THE CITY OF NEW YORK, POLICE OFFICER
TRISTIAN LATIMORE and POLICE OFFICER
"JOHN DOE,"

Defendants.

-----X

ALEXANDER M. TISCH, J.:

This action arises out of damages allegedly sustained by plaintiff Saysha Segundo when she was arrested by Police Officer Tristian Latimore (Latimore) and detained by defendant the City of New York until the following day, and was purportedly denied access to medical treatment. The City of New York and Latimore move, pursuant to CPLR 3212, for an order granting summary judgment dismissing plaintiff's claims of false arrest, false imprisonment, malicious prosecution, denial of medical treatment, and negligent hiring, training and supervision. In addition, defendants move, pursuant to CPLR 3211 (a) (7), for an order dismissing plaintiff's causes of action for malicious prosecution, negligence, and negligent hiring, training and supervision, for failing to allege said claims in her notice of claim, and also for an order dismissing the federal causes of action, as insufficiently pled.¹

BACKGROUND AND FACTUAL ALLEGATIONS

The relevant facts are as follows: On February 23, 2015, plaintiff left work around 4:45 p.m. and took the subway home. As she was exiting her stop on 103rd Street and Lexington Ave, a stranger, S.G., allegedly pushed plaintiff on a crowded stairwell and then yelled at plaintiff. When they both exited the stairwell, S.G. followed plaintiff, harassing her and attempting to start a fight. Plaintiff states that she

¹ Defendants additionally seek dismissal of the negligence claim, pursuant to CPLR 3211 (a) (7), as a claim of negligence cannot be maintained in connection to a false arrest claim.

was trying to walk away but that S.G. was following her. Plaintiff testified that she was scared because S.G. wanted to fight with her.

Plaintiff did not want S.G. to see where she lived so she went into a nearby deli. However, plaintiff testified that S.G. followed her and then attacked her in the deli. Plaintiff testified that S.G. “started punching me. She started hitting me. She dig’d (sic) her fingers in my eyes, punching me in my nose.” Defendants’ exhibit G, plaintiff tr at 42. Plaintiff stated that she was trying to get away, and that the attack lasted five minutes until the police arrived on the scene and separated the women.

Both plaintiff and S.G. were arrested. Plaintiff testified that she told Latimore that she was attacked and that he could check the surveillance camera in the store to verify this. Latimore informed plaintiff that he had to take both women into the police precinct but that, after he reviewed the material on camera, plaintiff would be released if she was telling the truth. Latimore arrested plaintiff and charged her with assault in the third degree, disorderly conduct and harassment in the second degree.

Latimore’s arrest report states, in pertinent part:

“[Plaintiff] states she was in the train station at E 103 Street and Lexington Ave when she accidentally walked into the suspect in which a dispute broke out, [plaintiff] states suspect made threats and followed [plaintiff]. [Plaintiff] was attacked by the defendant at the above location. Upon further investigation [plaintiff] has 1 active warrant doc: 2006SN102970.”

Defendants’ exhibit B at 1.

Plaintiff testified that she was “gushing blood all over [her] nose,” and that the ground was covered in blood. *Id.* at 51. She stated that she was bleeding and in pain. According to plaintiff, she did not ask for medical assistance, but when she arrived at the precinct, she was given an ice pack and gauze. She continued that the “medical that gave me the ice pack. . . . I just said [my eye] was burning.” *Id.* at 93. Plaintiff testified that she was placed in a cell while Latimore was reviewing the surveillance tape. Latimore purportedly advised plaintiff that, as soon as he reviewed the footage, she could be released. Plaintiff testified that she was under the impression that she was going to be released quickly, so she did not ask for medical treatment when she arrived at the precinct. She explained that she decided, at the

time, not to receive medical assistance because she “wanted to get home I was supposed to see a judge that night.” *Id.* at 70.

After Latimore reviewed the footage, he allegedly told plaintiff that, although he had been going to release her, he was now unable to do so because she had “a warrant popping up.” *Id.* at 66. Plaintiff testified that she told Latimore that she was arrested when she was 16 for disorderly conduct, but that there should not be an active warrant because she did community service. Plaintiff was confused about the warrant and was not given any paperwork about the warrant until after she was released.

Plaintiff was then told that she would have to go to Central Booking, which was downtown. At that point, plaintiff states that she requested medical assistance, but Latimore “convinced” her not to get it because it would slow the process of going home. *Id.* at 69. Plaintiff testified, “[Latimore] told me I shouldn’t see the doctor because it was going to slow up the process of me going home that night and I was going to see a judge supposedly that night. That [sic] they were going to speed up the process ASAP. Because if you got a warrant, supposedly you see the judge that same exact day.” *Id.* at 69-70.

Plaintiff states that she was placed in the same police car as S.G. and taken to Central Booking. Plaintiff testified that she was not able to appear before a judge until the afternoon of the 24th and “[i]t was so fast.” Plaintiff was advised that the charges were dismissed and that she could go home.² Plaintiff testified, “[b]asically it was nothing. It was for the warrant I supposedly had. It was my name, my last name but it wasn’t my date of birth.” *Id.* at 84. The form signed by the supervising Assistant District Attorney (ADA) on February 24, 2015 indicates that the DA’s office declined to prosecute plaintiff because, “[u]pon further investigation, it was determined that [S.G.] was the initial aggressor.” Defendants’ exhibit C at 1.

² In plaintiff’s original testimony during her 50-h hearing, she stated that she did not meet with a lawyer, did not see the judge, and that all charges were dismissed against her and she was able to leave out the back door. *See* defendants’ exhibit D, tr at 21.

Shortly after plaintiff returned home, she went to the emergency room because her nose was hurting and her eyes were shut.³ According to plaintiff, the doctor informed her that she had a blood clot in one eye and that the eye was infected. Plaintiff had to miss a week of work due to her injuries. Plaintiff states that, as a result of an eye injury, she no longer can see things from far away and that she has a permanent scar in her eye.

Plaintiff filed a notice of claim with the City of New York on May 20, 2015. Under the “injuries claimed” section, plaintiff wrote, “[f]alse arrest, [u]nlawful detention, partial loss of vision, fear, humiliation, loss of employment.” Defendants’ exhibit A at 3. The notice of claim further stated the following:

Claimant was a victim of an assault, when she was wrongly arrested, placed into custody for at least one day by the New York City Police Department, despite video and bystander evidence exonerating Claimant from any wrongdoing. All criminal charges were dismissed at arraignment as District Attorney declined to prosecute in light of the evidence that the New York Police Department chose to ignore in order to meet an arrest quota.

In addition, Claimant was seriously injured from the aforesaid assault and despite requesting medical treatment, the New York City Police Department refused, which resulted in worsening of medical condition, including partial loss of vision, which could have been cured [if] treated in a timely fashion.”

Id. at 2.

Plaintiff subsequently commenced this action, alleging that defendants improperly detained and arrested her and that she was denied medical care, despite being severely injured. She continues that this denial of immediate and proper medical treatment resulted in permanent injuries, such as a permanent partial loss of vision. Plaintiff further claims that defendants filed a baseless arrest report alleging that there was an outstanding arrest warrant against her. In addition, plaintiff alleges that the City of New York failed to properly hire, train and supervise its employees, and that defendants were negligent and careless in both wrongly detaining her and denying her medical treatment.

³ Although plaintiff testified that she went to the emergency room around six p.m. on February 24, 2015, the emergency room notes state that plaintiff was seen around that time on February 25, 2015.

In the bill of particulars, plaintiff specifically alleges that defendants “denied Plaintiff immediate medical attention when she demanded treatment for eye injuries.” Defendants’ exhibit O at 3. She states that defendants “violated various sections of the Federal and State Constitution” *Id.* at 4. Further, “Defendants, superiors, commanders and/or supervisors failed to properly screen the said defendants before being hired” *Id.* at 3.

Defendants’ Motion

Defendants move, pursuant to CPLR 3212 and CPLR 3211 (a)(7), for either summary judgment or dismissal of the causes of action alleged in the complaint.

In support of their motion, defendants provide the testimony and affidavit of Latimore, as well as other relevant documentation. Latimore testified that, on the date of the incident, as he was on his way to work, a man stopped him and told him that there were two women fighting inside the store.⁴ When Latimore walked into the deli, he heard screaming and saw two females fighting. He stated that plaintiff looked towards him and her face was bloody. He testified that he called for back-up help and that two other officers and a sergeant arrived at the scene in a few minutes. Latimore further testified that he called EMS “automatically” because he saw that plaintiff had a bloody face.

After the women were separated, plaintiff told Latimore that she had walked into the store to get away from S.G. and that S.G. then attacked her. However, S.G. told Latimore that plaintiff “threw the first punch and that [plaintiff] followed behind her.” Defendants’ exhibit H, Latimore tr at 28. The male who alerted Latimore about the fight turned out to be S.G.’s cousin or friend, but, at the time, Latimore was unaware of this. The man told Latimore that he and S.G. walked into the store, that plaintiff had walked in behind, and that the women began fighting. Although Latimore questioned the employee who was working in the store at the time, Latimore testified that he did not speak English very well. Nevertheless, the employee told him that the ladies were fighting.

⁴ The deli where the incident occurred is around the corner from the police precinct.

After plaintiff was placed in the cell, Latimore went back to the store to watch the video. Only after watching the video did Latimore see that S.G. was the initial aggressor in the physical altercation. He testified that, after he watched the video, he learned that “S.G. walked inside the store first and that plaintiff walked in behind her. On the video you can’t hear but you can see some type of words were exchanged because of the hand gestures and they began fighting.” *Id.* at 27.

Latimore testified that he would have let plaintiff go from the precinct with a summons to appear in criminal court. At that point, Latimore concluded that he would charge plaintiff with harassment and disorderly conduct, but not with assault charges. However, while Latimore was processing plaintiff’s arrest, the NYPD’s computer system generated documentation indicating that plaintiff had an active warrant for disorderly conduct. After seeing that plaintiff had an outstanding warrant, Latimore testified that she could not “go with the C summons because she has a warrant.” *Id.* at 40. According to Latimore, after discussing his recommendations with his sergeant, he was advised to put both women through for the same charges and “then let the ADA decide.” *Id.* at 41.

When Latimore verified the information on the active warrant, the date of birth did not match plaintiff’s. However, plaintiff told Latimore that she had a warrant and that it was her correct name, address and criminal charge on the warrant, just not the right day for the date of birth. Latimore testified that the date of birth was “somewhat” close to the correct date and that plaintiff “was in fact charged with disorderly conduct at one point and therefore she has a warrant for that charge. Just because that, you know, the date of birth doesn’t match doesn’t necessarily mean that’s not that person.” *Id.* at 51.

Eric Black, Chief Clerk of the New York City Criminal Court, submitted an affidavit stating that, based on his review of the records, “a bench warrant for the arrest of Saysha Segundo was issued on August 18, 2006.” Defendants’ exhibit M, Black aff, ¶ 5. On February 23, 2015 the warrant was still open and active. “On February 24, 2015, before Hon. Bruna Dibiase, the warrant was vacated, an Adjournment in Contemplation of Dismissal (ACD) was granted, and a dismissal/sealing date of 08/21/2015 was set.” *Id.*, ¶ 4.

Latimore testified that he called EMS as soon as he arrived at the deli. The phone records provided by defendants indicate that EMS was called at 5:35 p.m., and that they arrived at the scene five minutes later. Plaintiff was taken from the store directly to the precinct and was examined by EMS at the precinct. Latimore testified that EMS asked plaintiff if she wanted to go to the hospital, but that plaintiff declined. Latimore continued that EMS gave plaintiff gauze and an ice pack.

After examining plaintiff, EMS issued a report stating that plaintiff had “bruises and scratches to the face” due to an assault. Defendant’s exhibit K at 1. Plaintiff signed this report and checked off the box indicating that she “refused medical aid.” *Id.* Latimore testified that he never told plaintiff that it would delay her release if she went to get medical treatment in the hospital. Latimore continued that he told plaintiff, “I am going to let you know now if you tell them you have any problems such as high blood pressure, diabetes, HIV or anything then they will send you to the hospital and this delays your process. Never once did I tell you don’t say you have any problems” Latimore tr at 60-61.

As set forth by Latimore and the supporting documentation, defendants argue that they should be granted summary judgment dismissing plaintiff’s claims for false arrest and false imprisonment because probable cause has been established. Defendants maintain that, given the circumstances, Latimore had sufficient probable cause to arrest plaintiff. As indicated, a man advised Latimore that two women were fighting in the deli. When Latimore arrived, he witnessed both women grabbing each other by the hair. S.G. advised Latimore that plaintiff had initiated the altercation and the man, who Latimore later learned was S.G.’s cousin, corroborated this testimony. As a result, defendants argue, the testimony provided, as well as Latimore’s own observations of the incident, provided Latimore with probable cause to believe that plaintiff was guilty of assault in the third degree, disorderly conduct and harassment in the second degree.⁵

⁵ Under New York Penal Law (Penal Law) § 120.00 (1) and (2), a person is guilty of assault in the third degree when, in relevant part, she intentionally or recklessly causes injury to another person. New York Penal Law § 240.20 (1) states that a person is guilty of disorderly conduct when, in pertinent part, she “engages in fighting or in violent, tumultuous or threatening behavior.” Lastly, pursuant to Penal Law § 240.26 (1), a person is guilty of harassment in the second degree when,

In addition, defendants contend that probable cause existed to continue to detain plaintiff after Latimore watched the surveillance video. Latimore found that plaintiff had an outstanding arrest warrant. Although the date of birth did not match plaintiff's, the rest of the information was accurate, including the month and year of plaintiff's birth. Court records confirmed that the warrant was active on the date plaintiff was arrested.

Defendants contend that they should be granted summary judgment dismissing plaintiff's denial of medical treatment claim, because the record indicates that Latimore did not deny plaintiff medical assistance, nor did he display a deliberate indifference. As set forth above, as soon as Latimore arrived at the deli, he called EMS and plaintiff received medical attention. Plaintiff then made the independent decision to refuse further treatment, and did not make any subsequent requests to go to the hospital.

Other than a cause of action for denial of medical treatment, plaintiff does not plead any federal causes of action in her notice of claim or in her complaint. In plaintiff's bill of particulars, she alleges that defendants violated various sections of the federal and state constitution. Among other things, defendants argue that, as plaintiff failed to identify any specific federal causes of action other than the cause of action for denial of medical treatment, any additional federal claims should be dismissed, as being insufficiently pled.

Defendants note that the notice of claim only alleged potential causes of action for false arrest, false imprisonment and denial of medical treatment. However, the instant complaint includes state law claims of negligence, malicious prosecution, and negligent hiring, training and retention. According to defendants, the failure to include these additional causes of action in the notice of claim requires their dismissal.

Alternatively, defendants argue that the negligence claim must be dismissed pursuant to CPLR

"with intent to harass," she, in relevant part, "strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same. . . ."

3211 (a)(7). They contend that, as plaintiff is seeking damages stemming from a false arrest, she is precluded from asserting a cause of action grounded in negligence.

Further, defendants argue that they should be granted summary judgment dismissing the claim for malicious prosecution, because the DA declined to prosecute plaintiff. In any event, even if a criminal prosecution was initiated, defendants state that a malicious prosecution claim would still fail because there was probable cause for the arrest, and there was no showing of malice.⁶ With respect to the active warrant, defendants maintain that plaintiff cannot establish a claim for malicious prosecution because plaintiff took an ACD for the active warrant, which is not considered a favorable termination.

Defendants contend that summary judgment is warranted on the claims alleging negligent hiring, training and retention, because it is undisputed that Latimore was acting within the scope of his employment during all of his interactions with plaintiff.

Plaintiff's Opposition

Plaintiff opposed defendants' motion for summary judgment with respect to the causes of action for false arrest, false imprisonment, denial of medical treatment and violation of her federal civil rights.⁷ Plaintiff argues that she has raised a triable issue of fact because "the facts leading up to the arrest," establish that plaintiff was the victim, not the assailant. Iadevaia affirmation, ¶ 3. As a result, defendants had no basis to charge and arrest plaintiff for assault, disorderly conduct and harassment.

Plaintiff continues that, after Latimore watched the surveillance video, he would have charged plaintiff with only disorderly conduct and harassment and released her, but he was unable to do so because of his sergeant's orders to put all of the charges through and have the ADA decide. According to plaintiff, this "demonstrates that the NYPD had a practice and policy of ignoring the civil rights of

⁶ "The elements of the tort of malicious prosecution are: (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." *De Lourdes Torres v Jones*, 26 NY3d 742, 760 (2016) (internal quotation marks and citations omitted).

⁷ Plaintiff expressly declined to oppose the remaining portions of defendants' motion.

citizens.” *Id.*, ¶ 4.

In addition, plaintiff argues that this failure to release her amounted to police abuse that resulted in her unlawful detainment until the next day. Even if defendants relied on a warrant to detain her, plaintiff argues that defendants relied on a questionable warrant, as the information on the warrant “did not match up.” *Id.*, ¶ 8.

Further, plaintiff argues that the arrest and charges were “unwarranted,” as the DA declined to prosecute and the charges were dismissed. According to plaintiff, the DA “sorted” it out, just as the sergeant had predicted, and this raises a question as to whether the NYPD has a pattern of arresting citizens and sending them downtown.

Regarding her claim for denial of medical care, plaintiff argues that questions of fact remain as to whether defendants knew or should have known that their conduct posed an excessive risk to plaintiff’s safety. Latimore saw that plaintiff’s eye was bloody and plaintiff complained of burning to her eye. However, according to plaintiff, she was prevented from receiving medical care, as she was advised not to get medical attention and she did not have an opportunity to go to the hospital.

DISCUSSION

I. Summary Judgment

“The proponent of a motion for summary judgment 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). The movant’s burden is “heavy,” and “on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 (2013) (internal quotation marks and citation omitted). Upon proffer of evidence establishing a prima facie case by the movant, “the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact.” *People v Grasso*, 50 AD3d 535, 545 (1st Dep’t 2008) (internal quotation marks and citation omitted). “A motion

for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility.” *Ruiz v Griffin*, 71 AD3d 1112, 1115 (2d Dep’t 2010) (internal quotation marks and citation omitted).

False Arrest and False Imprisonment

To establish a cause of action for false arrest and imprisonment, plaintiff must prove that defendants “intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to it, and that the confinement was not otherwise privileged.” *Hernandez v City of New York*, 100 AD3d 433, 433 (1st Dep’t 2012). Where, like here, there was no initial warrant, defendants have the burden of proving “legal justification as an affirmative defense . . . showing that the arrest was based on probable cause.” *Broughton v State of New York*, 37 NY2d 451, 458 (1975) *cert denied* 423 US 929 (1975). Probable cause for an arrest “constitutes a complete defense to causes of action alleging false arrest [and] false imprisonment . . . [It] 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 committed or is being committed by the suspected individual, and probable cause must be judged under the totality of the circumstances.” *Shaw v City of New York*, 139 AD3d 698, 699 (2d Dep’t 2016) (internal quotation marks and citations omitted).

Here, defendants have met their burden to establish the existence of probable cause at the time of the arrest for assault in the third degree, disorderly conduct and harassment in the second degree. Latimore testified that a man called him over to the deli because two women were fighting. When Latimore entered the deli, he personally observed plaintiff and S.G. engaged in some sort of altercation and grabbing at each other’s hair. The man had corroborated S.G.’s story that plaintiff had attacked S.G., causing injuries to S.G., and a witness in the store told Latimore that two women were fighting. “Generally, 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.” *Williams v City of New York*, 114 AD3d 852, 853 (2d Dep’t 2014) (internal quotation marks and citations omitted).

In opposition, plaintiff has failed to raise a triable issue of fact to preclude summary judgment on the false arrest and imprisonment causes of action. Plaintiff argues that, based on the facts leading up to the arrest, which demonstrate that she was the victim, she was improperly arrested. However, defendants have established that, based on the facts known at the time of the underlying incident, it was reasonable for Latimore to believe that plaintiff was guilty of assault. *See e.g. Jenkins v City of New York*, 2 AD3d 291, 292 (1st Dep't 2003) (internal quotation marks and citation omitted) (Probable cause "requires a showing of such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe that [the subject] had committed the [crime]").

The existence of probable cause is measured "at the moment the arrest was made." *Beck v Ohio*, 379 US 89, 91 (1964). Although Latimore subsequently watched the surveillance video and learned that the man had corroborated S.G.'s false story, at the time of the arrest, Latimore had no reason to doubt their testimony. "A citizen's reliability, as differentiated from that of a paid or anonymous informant, is assumed, since he [or she] could be prosecuted if his [or her] report were a fabrication." *People v Bero*, 139 AD2d 581, 584 (2d Dep't 1988) (internal quotation marks and citation omitted). Furthermore, probable cause is not negated by plaintiff's exculpatory reasons for her conduct. *See e.g. Agront v City of New York*, 294 AD2d 189, 190 (1st Dep't 2002) ("The alleged conflicting evidence uncovered in the course of the police investigation is relevant to the issue of whether guilt beyond a reasonable doubt could have been proven at a criminal trial, not to the initial determination of the existence of probable cause").

Plaintiff argues that she should have been released after Latimore watched the video, and that she was improperly confined as a result of being falsely charged with assault. However, Latimore testified that, after he watched the video, he told his sergeant that he could not immediately release plaintiff due to an outstanding warrant. Regardless of the charges, defendants had probable cause to confine plaintiff after watching the video because "[a] confinement is privileged when it is based on an arrest warrant, valid on its face, by a court having jurisdiction." *Urena v City of New York*, 127 AD3d 538, 539 (1st

Dep't 2015) (internal quotation marks and citations omitted). As a result, the subsequent conversation about the charges that Latimore allegedly had with his sergeant does not eliminate the existence of probable cause for Latimore's initial arrest of plaintiff, or the decision to further detain her once he learned that she had an active warrant.

Further, plaintiff fails to raise a triable issue of fact that defendants used an invalid warrant to detain her. The record indicates that this warrant was open and active on the date Latimore checked the system. It was not vacated until an ACD was granted on February 24, 2015. All of the information provided in the warrant, including plaintiff's offense date, criminal charge, listed name, address, month and year of birth, were accurate. Plaintiff's day of birth was the only inaccuracy on the warrant. In light of the fact that plaintiff advised Latimore that she had been arrested at 16 for disorderly conduct, it was reasonable for Latimore to believe that the warrant information provided to him was valid. Accordingly, defendants are granted summary judgment dismissing the causes of action for false arrest and false imprisonment.

Denial of Medical Treatment

Claims for deliberate indifference to serious medical needs, when, like here, are brought by pretrial detainees, are evaluated under the due process clause of the fourteenth amendment. *Youngblood v City of New York*, 2017 WL 3176002, *4, 2017 US Dist LEXIS 115683, *10 (SDNY 2017). For a plaintiff to establish a claim for deliberate indifference to serious medical needs, she "must satisfy a two-prong test alleging, first, that the alleged deprivation of adequate medical care [was] sufficiently serious, and, second, that the defendant acted with deliberate indifference or a sufficiently culpable state of mind." *Id.* (quotation marks and citations omitted). To satisfy the first prong, plaintiff must provide evidence that she suffered from an "objectively serious medical condition." *Gersbacher v City of New York*, 2017 WL 4402538, *13, 2017 US Dist Lexis 162707, *34 (SDNY 2017). The second prong, a "sufficiently culpable state of mind," can be shown by "proving a defendant's recklessness - that is, that a defendant knew, or should have known that his or her conduct posed an excessive risk to health or

safety.” *Id.*, 2017 WL 4402538 at *13, 2017 US Dist Lexis 162707 at *35. (internal quotation marks and citations omitted). A standard greater than “mere negligence” is required for liability. *Darnell v Pineiro*, 849 F3d 17, 36 (2d Cir 2017).

Plaintiff’s deliberate indifference claim is premised on the allegation that the police officers knew or should have known that their conduct posed an excessive risk to plaintiff’s health. Plaintiff alleges that, despite requesting medical assistance, she was denied immediate and proper medical treatment and that this denial of treatment resulted in permanent damage to her eye.

Here, defendants have met their burden on summary judgment showing that neither Latimore nor any unnamed officer acted with a “deliberate indifference” to plaintiff’s medical needs. The record indicates that Latimore promptly requested medical assistance for plaintiff as soon as he arrived at the deli. Medical assistance was provided to plaintiff, and she received an ice pack and gauze. Plaintiff testified that she did not want to go to the hospital because she did not want to delay her release. After EMS’s initial visit to plaintiff, plaintiff signed the form refusing further medical aid. Plaintiff did not request to go to the hospital, nor was she told that she could not receive medical assistance.

In opposition to defendants’ motion, plaintiff argues that, despite complaining of a burning eye, she was not given a chance to go to the hospital. Further, plaintiff claims that she was specifically told not to get medical attention.

The court notes that plaintiff’s situation herein is similar to the one in *Lloyd v City of New York* (246 F Supp 3d 704, 709 [SDNY 2017]), where the plaintiff had alleged that the police officers demonstrated a deliberate indifference to her serious medical needs. After the plaintiff had been arrested and detained, she told the police officers that she was recovering from surgery as a result of breast cancer and that she needed to take medication and change her bandages. Although the police officers told plaintiff that she could go to the hospital to have her medication administered, she declined to do so. Plaintiff testified that she opted not to go to the hospital because the police officers told her that a “trip to the hospital would delay her criminal processing and her release from jail.” *Id.* at 713. It was

undisputed that plaintiff believed that she would be released soon and did not want to delay the processing of her criminal proceeding. Plaintiff signed the prisoner medical treatment release form, and she testified that she did so in “reliance on officers’ false assurances” that she would be released soon. *Id.* at 713.

The *Lloyd* Court granted defendants’ motion for summary judgment on plaintiff’s deliberate indifference claim, “principally because the officers offered her treatment after her arrest which she declined.” *Id.* at 709. The Court noted that plaintiff’s “complaint, therefore, is not that officers were deliberately indifferent to her medical needs; rather that officers provided her inaccurate information about the likely disposition of her criminal case.” *Id.* at 719. The Court held that “[a] reasonable jury could not find that the City Defendants were deliberately indifferent to Plaintiff’s serious medical needs, because they repeatedly offered her medical assistance.” *Id.* The Court addressed plaintiff’s claims that defendants were deliberately indifferent because they “falsely assured her that she would be released on her own recognizance” and held, in pertinent part, that even assuming defendants provided inaccurate information about the likely disposition of her criminal case, “a reasonable jury could not conclude that the officers knew, or should have known, that their provision of information to Plaintiff . . . posed an excessive risk to Plaintiff’s health or safety” *Id.* (internal quotation marks and citation omitted).

Here, as in *Lloyd*, “a reasonable jury could not find that the City Defendants were deliberately indifferent to Plaintiff’s serious medical needs.” *Id.* at 719. Plaintiff argues that her situation is not comparable because the plaintiff in *Lloyd* was provided with the ability to go to the hospital but here, “there is no such evidence.” Iadevaia affirmation, ¶ 15. However, the record indicates that the instant plaintiff was provided with the opportunity to go to the hospital when she first arrived at the precinct. Plaintiff testified that she told EMS initially that her eye was burning, and it is documented and conceded by plaintiff that she did not want to go to the hospital. Plaintiff testified that she made the decision at the time not to receive medical assistance because she wanted to get home.

Similar to what transpired with the plaintiff in *Lloyd*, the instant plaintiff then testified that, when

she found out she was going to Central Booking, she requested medical assistance, but Latimore convinced her not to accept it, as it would delay the process of her being released. Latimore testified that he never told plaintiff not to accept treatment. Without resolving any credibility issues, even viewing the facts in the light most favorable to plaintiff, plaintiff does not raise a triable issue of fact that defendants acted recklessly with her requests for medical care. Plaintiff concedes that she was provided with an opportunity to go to the hospital and was never prevented from receiving further medical assistance. Even if Latimore provided her with inaccurate information about the disposition of her criminal proceeding and her release, this does not constitute a deliberate indifference to her medical needs. Accordingly, defendants are granted summary judgment dismissing this cause of action.

Civil Rights Claims

“[A] person has a private right of action under 42 USC § 1983 against police officers who, acting under color of law, violate federal constitutional or statutory rights.” *Delgado v City of New York*, 86 AD3d 502, 511 (1st Dep’t 2011). Furthermore, pursuant to 42 USC § 1983, plaintiff may “sue government agents for unlawful arrest . . . in violation of the laws and Constitution of the United States.” *De Lourdes Torres v Jones*, 26 NY3d at 762. Under this statute, a municipality may be liable for civil rights violations if plaintiff shows that her civil rights were violated as a result of “an official government policy, custom or widespread practice.” *Id.* “[T]he existence of such a policy may be shown by proof that the municipality had a custom or practice that was both widespread and reflected a deliberate indifference to its citizens’ constitutional rights.” *Id.* at 768.

Plaintiff opposes defendants’ motion for summary judgment regarding her false arrest, false imprisonment, denial of medical care and violation of federal civil rights claims. However, beyond alleging that her federal civil rights were violated, with the exception of the denial of medical treatment claim, plaintiff has not set forth any statutes, arguments or case law to support any violation of federal civil rights. Nonetheless, to the extent that plaintiff is claiming that individual defendants unlawfully arrested and detained her in violation of 42 USC § 1983, these claims are untenable because probable

cause existed for the arrest. *See Singer v Fulton County Sheriff*, 63 F3d 110, 118 (2d Cir 1995) (*cert denied* 517 US 1189 (1996)) (“There can be no federal civil rights claim for false arrest where the arresting officer had probable cause”); *see also Medina v City of New York*, 102 AD3d 101, 108 (1st Dep’t 2012) (“The cause of action for violation of civil rights must be dismissed based on the dismissal of the antecedent tort claims of false arrest/false imprisonment . . .”).

In her opposition to defendants’ motion, plaintiff implies that the City of New York is liable as a municipality, because the NYPD had a policy and practice of ignoring civil rights of citizens by unlawfully arresting and charging them. She further alleges that, by being improperly detained, she was a victim of police abuse. However, “plaintiff’s claims that [her] constitutional rights may have been violated as a result of certain policies were improperly raised for the first time in opposition to the City’s motion for summary judgment.” *Shaw v City of New York*, 139 AD3d at 699-700. In any event, as set forth below, plaintiff’s allegations fail to raise a triable issue of fact as to whether “an official government policy, custom or widespread practice” of the City of New York, itself, caused the police officers to violate plaintiff’s constitutional rights. *De Lourdes Torres v Jones*, 26 NY3d at 762.

“Here, the evidence does not support an inference that the City and the NYPD had a widespread custom of arresting people in violation of their constitutional rights, nor is there any proof that such a policy caused the allegedly wrongful arrest and prosecution of plaintiff.” *Id.* at 768-769. In opposition, plaintiff fails to raise a triable issue of fact as to whether there was a policy in place, promulgated by the City of New York, that caused the police officers to wrongfully arrest plaintiff and send her downtown. Plaintiff provides no factual support, beyond her individual situation, to support her belief that the NYPD has a policy or “practice of arresting and sending citizens downtown despite the lack of [probable cause].” *Iadevaia* affirmation, ¶ 6.

Further, as the City of New York, itself, did not cause the alleged constitutional violation, “[i]t cannot be held liable pursuant to 42 USC § 1983 based solely upon the doctrine of respondeat superior or vicarious liability” for the alleged actions or comments of one police officer. *Liu v New York City*

Police Dept., 216 AD2d 67, 68 (1st Dep't 1995). In addition, "a single incident of objectionable conduct" fails to "establish the existence of policy or custom for section 1983 purposes." *Dillon v Perales*, 181 AD2d 619, 620 (1st Dep't 1992) (citation omitted).

Furthermore, with respect to the denial of medical treatment claim, plaintiff's "complaint failed to allege any facts from which it could be reasonably inferred that the defendants had a policy or custom of depriving medical treatment to persons in police custody." *Vargas v City of New York*, 105 AD3d 834, 837 (2d Dep't 2013).

II. Dismissal

On a motion to dismiss pursuant to CPLR 3211, "the facts as alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference," and the court must determine simply "whether the facts as alleged fit within any cognizable legal theory."

Mendelovitz v Cohen, 37 AD3d 670, 671 (2d Dep't 2007). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration." *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dep't 2013) (internal quotation marks and citation omitted). "In assessing a motion under CPLR 3211 (a) (7), . . . the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." *Leon v Martinez*, 84 NY2d 83, 88 (1994) (internal quotation marks and citations omitted).

Service of a notice of claim is required prior to the commencement of a tort action against a municipal to enable "authorities to investigate, collect evidence and evaluate the merit of a claim. . . ." *Davis v City of New York*, 153 AD3d 658, 660 (2d Dep't 2017) (internal quotation marks and citation omitted); see General Municipal Law § 50-e (1) (a). "Causes of action for which a notice of claim is required which are not listed in plaintiff's original notice of claim may not be interposed." *Scott v City of New York*, 40 AD3d 408, 409 (1st Dep't 2007) (internal quotation marks and citation omitted).

Although the notice of claim provides a detailed description regarding the nature of plaintiff's claim, these allegations pertained to the claims for wrongful arrest and the denial of medical care. The

notice of claim did not provide adequate notice of the claims consisting of negligent hiring, training and supervision, negligence and malicious prosecution. Accordingly, as these were not listed in the notice of claim, plaintiff's causes of action for negligent hiring, training and supervision, negligence and malicious prosecution must be dismissed.⁸

Even though the notice of claim did not set forth any allegation that plaintiff's federal civil rights were violated, "[a] notice of claim is not required to assert a claim for civil rights violations." *Swinton v City of New York*, 61 AD3d 557, 558 (1st Dep't 2009). As noted, plaintiff does not plead any federal causes of action in her complaint. The bill of particulars alleges that defendants violated various sections of the US Constitution. Plaintiff appears to be alleging municipal liability under 42 USC § 1983 for the City of New York's failure to supervise the individual police officers who wrongly arrested plaintiff, and for municipal liability under 42 USC § 1983 for malicious prosecution.⁹

In any event, pursuant to CPLR 3211 (a)(7), these additional civil rights causes of action must be dismissed for failure to state a cause of action. It is well settled that "[v]ague and conclusory allegations are insufficient to sustain a . . . cause of action." *Fowler v American Lawyer Media*, 306 AD2d 113, 113 (1st Dep't 2003) (internal quotation marks and citation omitted). Here, any additional causes of action brought pursuant to 42 USC § 1983 are not sufficiently pled because they are "wholly unsupported by any allegations of fact identifying the nature of that conduct or the policy or custom which the conduct purportedly advanced." *Martin v City of New York*, 153 AD3d 693, 694 (2d Dep't 2017) (internal quotation marks and citation omitted); *see also Pang Hung Leung v City of New York*, 216 AD2d 10, 11 (1st Dep't 1995) ("Plaintiff's broad and conclusory statements, coupled with his failure to allege facts of the alleged offending conduct, are insufficient to state a claim under section 1983.")

⁸ In any event, as plaintiff did not oppose defendants' motion with respect to the remaining causes of action, she has abandoned them. *See e.g. Hanig v Yorktown Cent. Sch. Dist.*, 384 F Supp 2d 710, 723 (SDNY 2005) ("[B]ecause plaintiff did not address defendant's motion to dismiss with regard to this claim, it is deemed abandoned and is hereby dismissed").

⁹ In discussing defendants' motion for summary judgment, the court already addressed and dismissed potential claims for false arrest and denial of medical care brought under 42 USC § 1983.

CONCLUSION

Accordingly, it is ORDERED that defendants the City of New York and Tristian Latimore's motion for summary judgment dismissing plaintiff Saysha Segundo's complaint is granted and the complaint is dismissed in its entirety.

Dated: March 28, 2018

ENTER:



ALEXANDER M. TISCH, A.J.S.C.

HON. ALEXANDER M. TISCH