

<b>Rose v City of New York</b>
2018 NY Slip Op 31510(U)
June 11, 2018
Supreme Court, Bronx County
Docket Number: 26115/15
Judge: Ben R. Barbato
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX - PART IA 21**



ANN MARIE ROSE,

Plaintiff,

**Index No. 26115/15**

-against-

THE CITY OF NEW YORK, P.O. EDUARDO PEREZ ROMERO (SHIELD NO. 022325), P.O. ADAM CRUZ (SHIELD NO. 20047), P.O. DARELL DENNISON (SHIELD NO. UNKNOWN), P.O. WOLL (SHIELD NO. 6956) AND POLICE OFFICERS "JOHN DOES AND JANE DOES 1-3" SAID NAMES BEING FICTITIOUS AND UNKNOWN,

**Present:  
Hon. Ben R. Barbato  
Justice, Supreme Court**

Defendants.

Recitation, as required by CPLR 2219(a) of the papers considered in the review of this motion for summary judgment/dismissal:

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion, Affirmation and Exhibits Annexed</b>	<b>1</b>
<b>Affirmation in Opposition</b>	<b>2</b>
<b>Reply Affirmation</b>	<b>3</b>

Plaintiff commenced this action to recover damages for personal injuries allegedly sustained on November 22, 2014 when police officers arrested plaintiff in the vicinity of East 161<sup>st</sup> Street and Melrose Avenue, Bronx, New York. Defendants City of New York (City), P.O. Eduardo Perez Romero, P.O. Adam Cruz, P.O. Darell Dennison and P.O. Matthew Wohl (misspelled as Woll) now move for summary judgment and dismissal of claims arising under state and federal law for false arrest and false imprisonment; malicious prosecution; assault, battery and excessive force; intentional infliction of emotional distress; negligent hiring, training,

retention and supervision; conspiracy; racial profiling; failure to intervene and failure to report; and municipal liability pursuant to *Monell*. Plaintiff opposes the motion.

A review of the documentation before the court including the pleadings, sworn testimony, and video footage, reveals that it is undisputed that plaintiff caused a rear-end motor vehicle accident with a stationary unmarked police vehicle stopped at a traffic light and admitted to alcohol consumption in the hours preceding the accident to responding officers at the scene. The record indicates that there was probable cause to arrest and detain plaintiff for driving while intoxicated and driving while ability impaired given the facts known to the officers based upon plaintiff's admissions and the responding police officers' observations of signs of intoxication. Therefore, summary judgment is granted in favor of the City and plaintiff's state and federal claims for false arrest and false imprisonment are dismissed. Plaintiff's state and federal claims for malicious prosecution are likewise dismissed as probable cause existed to arrest, detain and prosecute plaintiff, and plaintiff cannot demonstrate actual malice with respect to her prosecution.

With regard to plaintiff's state and federal claims for assault, battery and excessive force, as probable cause existed to arrest and detain plaintiff, the officers involved in plaintiff's arrest were entitled to use a degree of force provided that the force used was reasonable under the totality of the circumstances surrounding plaintiff's arrest. Moreover, "[t]he conduct of the arresting officers is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Koeiman v City of New York*, 36 AD3d 451, 453 (1<sup>st</sup> Dept 2007) (internal quotation marks omitted) (citations omitted). The record before the court is devoid of any testimony that plaintiff exited the vehicle when instructed to do so. At his

deposition, Police Officer John Moise testified that he removed plaintiff from her vehicle by gripping and pulling on her left arm with both of his hands to remove plaintiff's hand from the steering wheel and overcome her resistance. Sergeant Darell Dennison, in his affidavit, averred that from his observation the entire process from the moment the officer placed his hands on plaintiff's left arm until the moment when plaintiff was outside her vehicle lasted less than one minute. Thus, the force used by the responding police officers was justified, reasonable and the minimum amount of force necessary to remove plaintiff from her vehicle and handcuff her in order to effectuate her arrest. Therefore, plaintiff's state and federal claims for assault, battery and excessive force are dismissed.

Since the City acknowledges that the individually named police officers were acting within the scope of their employment for the City and the New York City Police Department at the time of this alleged incident, plaintiff's state law claims for negligent hiring, training, retention and supervision are dismissed.

With respect to plaintiff's *Monell* claims, plaintiff has failed to properly identify any official practice or custom which resulted in the violation of her constitutional rights other than counsel's conclusory allegations. *See Monell v New York City Dept. of Social Servs.*, 436 US 658 (1978). Plaintiff's *Monell* claims are insufficiently pled as they are conclusory and speculative and fail to satisfy the requirements of *Ashcroft v Iqbal*, 556 US 662 (2009) and its progeny. Therefore, plaintiff's federal claims sounding in municipal liability or *Monell* are dismissed. To the extent that plaintiff alleges federal claims for negligent hiring, training, retention and supervision, they are dismissed as well.


Plaintiff's claims for conspiracy, racial profiling, failure to report and failure to intervene

are also dismissed as probable cause existed to arrest, detain and prosecute plaintiff, and plaintiff has failed to demonstrate a conspiracy or a racially motivated basis relating to the alleged incident. In addition, plaintiff fails to show that a constitutional injury occurred under 42 USC § 1983.

As plaintiff failed to plead conduct which would be considered “outrageous”, the intentional infliction of emotional distress claim is dismissed as well since such a claim is barred as pled against government bodies as a matter of law and public policy.

Accordingly, summary judgment is granted in favor of the City dismissing plaintiff’s complaint in its entirety.

This constitutes the decision and order of the court.

  
BEN R. BARBATO, J.S.C.

Dated: June 11, 2018