Weller v City of Mount Vernon
2020 NY Slip Op 34940(U)
May 5, 2020
Supreme Court, Westchester County
Docket Number: Index No. 52157/2018
Judge: Lawrence H. Ecker
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To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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PATRICK WELLER,

Plaintiff,

- against -

THE CITY OF MOUNT VERNON, POLICE OFFICER RYAN HUGHES, BADGE NO. 2088, POLICE OFFICER JAMES MCPARTLAND, BADGE NO. 2210, POLICE OFFICER PEDRO GUTIERREZ, BADGE NO. 2028, POLICE OFFICERS JOHN/JANE DOES 1-4,

Defendants.

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INDEX NO. 52157/2018

DECISION/ORDER

Motion Date: 02/05/2020
Motion Seq. 1

ECKER, J.

The following papers were considered on the motion of THE CITY OF MOUNT VERNON, POLICE OFFICER RYAN HUGHES (BADGE NO. 2088), POLICE OFFICER JAMES MCPARTLAND (BADGE NO. 2210), POLICE OFFICER PEDRO GUTIERREZ (BADGE NO. 2028), and POLICE OFFICERS JOHN/JANE DOES 1-4 (defendants) (Mot. Seq. 1), made pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint of PATRICK WELLER (plaintiff) with prejudice as against all defendants:

PAPERS

Notice of Motion, Affirmation in Support, Exhibits A-H, Memorandum of Law in Support
Affirmation in Opposition, Exhibits A-B
Memorandum of Law in Reply

Upon the foregoing papers, the court determines as follows:

On November 20, 2016, plaintiff was attending a friend's baby shower in "The Mansion" located in the City of Mount of Vernon. He arrived at the venue at approximately 10:00 p.m. About an hour and a half later, police received a telephone call from Tajan Millan, a security guard on duty at The Mansion, reporting that an individual was allegedly menacing his then girlfriend with a firearm in the second-floor bathroom of the venue. Shortly thereafter, police officers with the Mount Vernon Police Department (hereinafter

MVPD) including, among others, Ryan Hughes received the radio dispatch call and responded to the scene.

Upon arriving at the premises, Millan told police officers that plaintiff was dangerous, that they proceed with caution in approaching him, and that he overserved plaintiff holding a black handgun while arguing with his girlfriend in front of the ladies' bathroom. Officers then proceeded upstairs to the bathroom and observed the suspect who matched Millan's description, later confirmed to be plaintiff. The officers issued verbal commands to plaintiff to display his hands, which he eventually did, and to get on the ground, which plaintiff allegedly did not comply with.

One of the officers attempted to handcuff him but defendant allegedly refused, thus leading one officer to grab plaintiff's left arm. Meanwhile, Hughes employed an "arm bar" and "leg sweep," forcing plaintiff to the ground and police successfully handcuffed him. The officers stood plaintiff up and one of the officers conducted a pat down search of his person. Police did not discover a concealed firearm on plaintiff's person. Subsequently, James McPartland and Pedro Gutierrez,[1] police officers with the MVPD, arrived at the scene. They joined Hughes along with members of the Emergency Services Unit to search the bathrooms and surrounding areas for a handgun.[2] Unable to locate any firearm or find plaintiff's girlfriend to assess whether any crime had been committed, plaintiff was released by the MVPD at the scene and was not prosecuted for the commission of a crime.

In 2018, plaintiff commenced this action against, among others, the City of Mount Vernon (the City) to recover damages for false arrest, false imprisonment, assault and battery, malicious prosecution, general negligence, negligent training and supervision of police officers, and violations of his rights under the Fourth and Fourteenth Amendments to the United States Constitution for alleged use of excessive use of force and unreasonable seizure.[3] The City filed an answer with 14 affirmative defenses. Following discovery and filing of the note of issue, the City now moves for summary judgment dismissing the complaint. Plaintiff opposes the instant motion.

In support of its motion, the City submits the complaint, transcripts of the examination before trial (EBT) of plaintiff, Hughes, McPartland, and Gutierrez, the MVPD incident report containing supplemental narrative reports of several officers who reported to the

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[1] Gutierrez testified that he retired from the MVPD in August 2018.

[2] Hughes stated at his deposition that the Emergency Services Unit is routinely dispatched on all firearm calls.

[3] Though not a model of clarity, the claims plaintiff asserts in the complaint appear to be conflated inasmuch as they are mixed and assorted under various causes of action. While the plaintiff did not specifically plead civil right violations under 42 USC § 1983, the Court notes that a claim for false arrest under New York law is "substantially the same" as a claim for predicated upon 42 USC § 1983 (*see Washington-Herrera v Town of Greenburgh*, 101 AD3d 986, 988 [2d Dept 2012]).

scene, and affidavits of Matthew Rosa and Marilena Sophia, MVPD police officers who took part in detaining plaintiff.[4] Plaintiff in opposition submits the bill of particulars and testimony from his General Municipal Law § 50-h hearing.

The City asserts that all claims against McPartland and Gutierrez ought to be dismissed since the two officers had no personal involvement in detaining plaintiff and their role in the incident was limited to search the premises for a firearm and maintain crowd control. Plaintiff does not address this contention whatsoever.

Reviewing the record as to McPartland and Gutierrez's role, they corroborated that they arrived at the scene after plaintiff had been detained and that their initial responsibility was to enforce crowd control. They maintained that they did not observe nor take any part in plaintiff's detention. McPartland and Gutierrez explained that they were directed by a lieutenant to conduct an evidence sweep of the second-floor area, described their search, which ultimately yielded no results. Having spent about 20 to 25 minutes at the scene, McPartland and Gutierrez testified that their investigation was complete and, so, they were directed to report back to MVPD headquarters for a debrief. Gutierrez's supplemental narrative report substantiated as much. McPartland testified that he did not author any report in connection with this incident. Based on the foregoing, the record demonstrates that McPartland and Gutierrez's investigatory role was limited in nature and there is nothing suggesting that they assisted in plaintiff's detention. Plaintiff, in opposition, failed to raise triable issues of fact with respect to those two defendants. Accordingly, McPartland and Gutierrez are entitled to summary judgment dismissing all causes of action insofar as asserted against them (*see Washington-Herrera v Town of Greenburgh*, 101 AD3d 986, 988 [2d Dept 2012]; *Tzambazis v City of New York*, 291 AD2d 397, 397 [2d Dept 2002]).

Next, the City argues that it is entitled to summary judgment inasmuch as the police had probable cause to arrest plaintiff based on a credible tip provided by Millan, the complaining witness. The City contends that the use of excessive force by Hughes was justified because he was acting on a tip that plaintiff was dangerous, notorious for opening gunfire, plaintiff could have been concealing a gun in his waistband and, thus, it was reasonable for Hughes to bring plaintiff down to ground in order to handcuff him. Also, the City maintains that plaintiff's 50-h hearing testimony fails to specifically identify that Hughes allegedly struck him on his head and, notwithstanding, plaintiff has failed to adduce medical evidence that he sustained injuries as a result of Hughes' conduct.[5]

Plaintiff counters that questions of fact exist given his deposition testimony, some of which is glaringly contradictory to that of the police officers who conducted the detention. Plaintiff asserts that he complied with the police officers' instructions prior to the detention, which he points out that defendants have conceded. Secondly, he maintains that the

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[4] Rosa authored the MVPD incident report. Annexed thereto are the "case supplemental narrative reports" of several officers including, among others, Hughes, Gutierrez, and Sophia.

[5] Alternatively, the City argues that Hughes is entitled to qualified immunity and that his use of excessive force was justified under the circumstances.

testifying officers did not see him armed with a firearm. In addition, plaintiff assails use of excessive force when Hughes allegedly punched him twice in the back of his head.

At his 50-hearing in 2017, plaintiff testified that, on the night in question, he was talking on his cellphone outside the door of the men's bathroom. Plaintiff avers that about 5 or 6 policer officers approached him with guns drawn, told him to place his hands up, grabbed him, slapped him to the floor, picked him back up, slammed him against the wall, hit his head against the wall about two times, and placed him in handcuffs. Plaintiff testified that a male officer, possibly of Hispanic descent, punched him in the back of his head twice. According to plaintiff, the officers uncuffed him after a few minutes and departed. Plaintiff testified that he was injured as a result of the police tactics, allegedly bleeding from his head, suffered bruises on the back of his head and marks on his right elbow, which necessitated medical treatment at a hospital and subsequent physical therapy.

Plaintiff's testimony at his EBT in 2019 further corroborated his version of the events. He recounted that his then girlfriend, Annett Baker, was in the ladies' restroom, that he was waiting for her directly outside in the hallway and talking on his cellphone for 5 to 6 minutes before police arrived. Although he maintained that the two did not have a fight, plaintiff stated that he "did not remember having an argument" with Baker on the night in question.[6] He testified that he had no interaction with any security guard at the venue that night. He stated, both at his 50-h hearing and his EBT, that he consumed only one small cup of alcohol that night at the party. In describing the encounter with police, plaintiff explained that they never requested identification from him, he "did what [the officers] said" by putting his hand up, but one officer grabbed him and pushed him to the wall while another "hit [him] in the back of the head." Plaintiff also testified that police "banged [his] head against the wall." After bringing him down to the floor, plaintiff described that the officers handcuffed him, searched him, asked him where the weapon was, to which he responded he possessed none.[7]

Plaintiff continued that the officers did not ask him if he had a weapon when they converged on him, only after forcing him down to the ground. He maintained that two officers held him against the wall while he was handcuffed for about 30 minutes during the course of searching the surrounding area. Plaintiff stated that the officers found no weapons and, without saying anything to him, they uncuffed and released him. He explained, shortly thereafter, his mother contacted an ambulance since his head was bleeding, he sustained an open cut on his right elbow, and marks and bruises on his

[6] Plaintiff stated that his relationship with Baker ended at some point in 2018 after she made a formal complaint to the MVPD that he had allegedly stolen some cash from her in the apartment which they resided. He testified that he was arrested and charged with grand larceny in connection with that incident, which was brought down to a lesser charge, that he was issued an order of protection to stay away from Baker, and required to perform 3 days of community service.

[7] Plaintiff testified at his EBT he has never owned, held, or fired a gun.

wrists. Plaintiff confirmed that he was not charged with any crimes concerning the underlying incident.[8]

The MVPD officers provided a varying different account of plaintiff's detention and the immediate moments prior to. Hughes stated that he was working as a patrol officer of the night in question while partnered with Rosa and they received the radio dispatch call regarding an incident transpiring at The Mansion. According to Hughes, dispatch described an ongoing incident there, wherein a black male wearing all white was reportedly in the ladies' restroom menacing a female with a firearm, who was possibly his girlfriend. Upon arriving, Hughes explained that he encountered Millan outside the entrance door of The Mansion, wherein Millan told Rosa and him that he was the bouncer who had placed the 911 call, described the suspect, and Millan stated that he was upstairs possibly in the mens or ladies' restroom. Hughes stated that him and Rosa waited for other MVPD officers to arrive and, about two minutes later, Sophia and another officer reported.

Hughes continued that the four officers then proceeded upstairs, unholstered their weapons, and that he observed plaintiff in a hallway where the bathrooms were. Hughes testified that plaintiff was attempting to hide near a dark corridor to avoid being spotted. Hughes stated that plaintiff appeared "highly intoxicated" and holding a clear cup of brown liquor when they encountered him. Hughes explained that, while standing about 5 feet away from plaintiff, he gave plaintiff commands to put his hands up and walk out of the corridor, which plaintiff did. But since plaintiff refused to comply with the command to get on the floor, Hughes stated that, after 15 seconds, he re-holstered his weapon, then he and Rosa grabbed each of plaintiff's arms, they took him down, and handcuffed him within five seconds. In taking plaintiff down, Hughes explained that he performed a leg sweep by "kick[ing] his legs out from under him." Hughes acknowledged that he implemented force in placing plaintiff's arm behind his back because he was trying to pull away and, so, Hughes conceded that he kicked both of his legs out to throw him "off balance." Hughes was unable to recall which position plaintiff landed on the ground or which part of plaintiff's body first hit the floor. Hughes continued that they stood plaintiff up to perform a pat down search for weapons. Hughes added that plaintiff made no complaints of pain, he did not observe any bruises on plaintiff's body, or observe him bleeding.

Since the officers found no weapons, Hughes stated that he joined the Emergency Services Unit along with McPartland and Gutierrez to search the bathrooms, corridor, and surrounding areas, while Rosa, Sofia and the other officer detained plaintiff. Hughes stated that the MVPD officers did not retrieve a firearm or find plaintiff's girlfriend. Consequently, Hughes stated that the officers brought plaintiff downstairs and released him based on a lieutenant's directive who had arrived on the scene. Hughes asserted that plaintiff was handcuffed for "maybe [10] minutes" and that he did not say anything to plaintiff after he was uncuffed and released. Subsequently, Hughes stated that all MVPD officers involved in the detention departed the scene for a debrief at the precinct.

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[8] Plaintiff added he was involved in another lawsuit stemming from an alleged false arrest but, in that case, he was charged with a crime which he could not recall.

In their affidavits, Rosa and Sophia asserted that plaintiff refused to comply with several commands to get on the floor. They stated that Rosa and Hughes brought plaintiff to the ground and Rosa handcuffed him. Sophia averred that she observed plaintiff "purposely bang his head [twice] into the wall" as he was being detained, which prompted Rosa and another office to move him away from the wall for preventing self-infliction of harm. Although Rosa and Sophia's affidavits substantially corroborate each other's version of the underlying incident, Rosa described that, since plaintiff refused to get on the ground, he grabbed plaintiff's left wrist and bicep in an attempt to get him on the ground to handcuff him. According to Rosa, this was done for safety purposes to ensure plaintiff was not concealing a firearm in his waistband. Rosa described that the officers, including Hughes, were eventually able get plaintiff down to the ground, confirming that Hughes employed an arm bar and leg sweep. Importantly, both Sophia and Rosa averred that they observed plaintiff "bang his head" twice against the wall causing a minor laceration to the left side of his forehead, which they assert was about the size of a dime-shaped coin. Sophia and Rosa asserted that plaintiff, while handcuffed, was removed away from the wall to the center area to prevent further self-inflicted harm. According to them, the detention lasted approximately 15 minutes before plaintiff was released.

Turning first to plaintiff's causes of action false arrest and false imprisonment, the court finds questions of fact exist on the limited record before it as to whether the MVPD officers had probable cause to believe that plaintiff committed a criminal offense. Ordinarily, "[p]robable cause to believe that a person committed a crime is a complete defense to causes of action alleging false arrest and false imprisonment. The existence or absence of probable cause becomes a question of law to be decided by the court only where there is no real dispute as to the facts or the proper inferences to be drawn. When conflicting inferences can be drawn from the evidence or where credibility is at issue, summary judgment should not be granted" (*Webster v City of New York*, 181 AD3d 756, 757 [2d Dept 2020] [internal quotation marks and citations omitted]; *see Gisondi v Town of Harrison*, 72 NY2d 280, 283 [1988]; *Combs v City of New York*, 130 AD3d 862, 863 [2d Dept 2015]). Based on the record and conflicting testimony of the parties, the court sustains the causes of action to recover damages for false arrest and false imprisonment as there are issues of fact precluding summary judgment in the City's favor (*see De Lourdes Torres v Jones*, 26 NY3d 742, 767, 771 [2016]; *Sinclair v City of New York*, 153 AD3d 877, 878 [2d Dept 2017]; *Williams v City of New York*, 40 AD3d 847, 850 [2d Dept 2007]). Although it is abundantly clear from the record that the City is relying solely upon Millan's 911 call and his alleged statements to the responding MVPD officers as its basis for probable cause, no evidence of an audio recording of the call, a written statement of the complaining witness, or Millan's testimony was submitted to substantiate the assertions of the police officers that they had probable cause to detain plaintiff (*see e.g. Liotta v County of Suffolk*, 157 AD3d 781, 781-782 [2d Dept 2018]; *compare Wyllie v District Attorney of County of Kings*, 2 AD3d 714, 718 [2d Dept 2003]). Of note, Rosa stated in his affidavit that Millan refused to provide identification and cooperate with police at the scene of the incident. The City avers that it is unable to locate Millan despite exhaustive efforts.[9] Further, plaintiff's account of the incident giving rise to his detention differs from that of the City inasmuch as he asserts he was not fighting with Baker on the

[9] Notwithstanding, the City mischaracterizes Millan as a "reliable informant" in its papers.

night in question, and given the undisputed fact that no gun was found at the scene, thus raising a triable issue of fact as to whether the police had probable cause to detain plaintiff (*see MacDonald v Town of Greenburgh*, 112 AD3d 586, 587 [2d Dept 2013]). Moreover, this is not a case where plaintiff's detention, however temporary, was pursuant to a court-issued arrest warrant (*see e.g. Campbell v County of Westchester*, 80 AD3d 641, 641-642 [2d Dept 2011]). The City's own submissions placed credibility at issue and the City failed to satisfy its burden of eliminating triable issues of fact as to whether the police officers had probable cause justifying plaintiff's detention (*see Webster v City of New York*, 181 AD3d at 757; *Fortunato v City of New York*, 63 AD3d 880, 880-881 [2d Dept 2009]). Thus, there is insufficient information in the scant record to award the City summary judgment dismissing the false arrest and false imprisonment causes of action (*see id.*).

Turning next to plaintiff's cause of action predicated on the officers' purported violations of his constitutional rights for excessive use of force, "[a] claim that a law enforcement official used excessive force is to be analyzed under the objective reasonableness standard of the Fourth Amendment. The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The determination of an excessive force claim requires an analysis of the facts of the particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [he or she] is actively resisting arrest or attempting to evade arrest by flight." (*Harris v City of New York*, 153 AD3d 1333, 1335 [2d Dept 2017] [internal quotation marks and citations omitted]. "[A] plaintiff must have sustained some injury to maintain a claim of excessive force, although that injury need not be severe" (*Boyd v City of New York*, 149 AD3d 683, 685 [2d Dept 2017]).

Applying these legal principles in the present matter, the record contains evidence that the force used to effect the detention may have been excessive. Significantly, questions of fact exist based on plaintiff's allegation that he was punched in the back of his head or whether he banged his head against the wall. Further, Hughes conceded he used force to restrain and handcuff plaintiff, that he employed a leg sweep on plaintiff kicking him to the floor during the course of detaining him to affix handcuffs. Hughes detailed how an arm bar is employed by taking a suspect's arm and forcing it behind the individual so he or she can be handcuffed. Hughes added that an arm bar is used in conjunction with a leg sweep to use momentum to bring the suspect to the ground. Hughes stated that the leg sweep requires "kick[ing] the feet out to get the person off balance." According to Hughes, an arm bar is employed when a suspect is resisting arrest and that he has employed an arm bar and leg sweep about 5 or 6 times during the course of his duty. Significantly, Hughes did not express that plaintiff was resisting arrest or attempting flight. Because of the sharp conflict in the versions of the events in dispute and its intensely factual nature, the issue of how much force was used and whether it was

reasonable under the circumstances ought to be decided by a jury (*see Holland v City of Poughkeepsie*, 90 AD3d 841, 844 [2d Dept 2011]).[10]

The court, however, reaches a different conclusion as to the remaining causes of action for assault and battery, malicious prosecution, general negligence, and negligent training and supervision. Plaintiff's cause of action for assault and battery are predicated on the police officers' contact with him during the allegedly unlawful detention. The City argues that these claims are time-barred which plaintiff, in opposition, does not contest. Indeed, that cause of action is governed by the one-year statute of limitations applicable to intentional torts set forth in CPLR 215 (3) (*see Williams v CVS Pharmacy, Inc.*, 126 AD3d 890, 891 [2d Dept 2015]; *Faiella v Tysens Park Apts., LLC*, 110 AD3d 1028, 1029 [2d Dept 2013]). Here, all of plaintiff's causes of action arose on the date of his detention, November 20, 2016, and the statute of limitations began to run on that date. The complaint, however, was not filed until February 15, 2018, which was beyond the expiration of the statute of limitations. Hence, it is undisputed that the alleged assault and battery occurred more than one year prior to the commencement of this action. Accordingly, the City is entitled to summary judgment dismissing the cause of action for assault and battery as time-barred (*see Williams v CVS Pharmacy, Inc.*, 126 AD3d at 891).

Additionally, the City is entitled to summary judgment dismissing that portion of the cause of action for malicious prosecution even in the absence of a warrant (*see Washington-Herrera v Town of Greenburgh*, 101 AD3d at 989). Here, there was no "actual malice" that motivated plaintiff's detention (*Broughton v State of New York*, 37 NY2d 451, 457 [1975], *cert denied* 423 US 929 [1975]). More importantly, it is uncontroverted that plaintiff was released at the scene and there was no criminal prosecution of him in connection with the underlying detention (*see Tzambazis v City of New York*, 291 AD2d at 397; *compare e.g. De Lourdes Torres v Jones*, 26 NY3d at 767-768).

Insofar plaintiff impliedly raises a claim for general negligence against the City, no such cause of action lies in cases involving alleged police misconduct where, as here, plaintiff's purported injuries fall within the ambit of an alleged false arrest claim resulting from his detention (*see Medina v City of New York*, 102 AD3d 101, 108 [1st Dept 2012]; *Santoro v Town of Smithtown*, 40 AD3d 736, 738 [2d Dept 2007]; *Johnson v Kings County Dist. Attorney's Off.*, 308 AD2d 278, 284-285 [2d Dept 2003]).

As for plaintiff's cause of action for negligent training and supervision of police officers, the City argues that plaintiff's claim fails as a matter of law inasmuch as plaintiff failed to proffer evidence establishing that the City knew about Hughes' alleged propensity of injurious conduct. The City also asserts that a minor discrepancy among police officers in completing a "use of force" report is insufficient to show that the City failed to adequately train and supervise members of its police force. Plaintiff contends that the City failed to

[10] As a municipality, the City may be held vicariously liable for the use of excessive force by its employees while acting within the scope of their employment (*see Holland v City of Poughkeepsie*, 90 AD3d 841, 844 [2d Dept 2011]).

properly train Hughes in his use of force, that Hughes' made an admission of a lawsuit with another individual stemming from a similar incident, and that Hughes and Gutierrez had diverging views as to when an MVPD officer must generate a use of force report.

The court finds that the City is entitled to summary judgment dismissing plaintiff's cause of action for negligent training and supervision. A claim for negligent hiring, retention, and training will be dismissed when an employer concedes that the acts alleged to have been perpetrated by the employee were within the scope of that employee (*see Medina v City of New York*, 102 AD3d at 108; *Ashley v City of New York*, 7 AD3d 742, 743 [2d Dept 2004]). "Generally, where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under [an alternative] theory of respondeat superior[,] and the plaintiff may not proceed with a cause of action to recover damages for negligent [training and supervision]" (*Ashley v City of New York*, 7 AD3d at 743; *see Medina v City of New York*, 102 AD3d at 108; *Karoon v New York City Tr. Auth.*, 241 AD2d 323, 324 [1st Dept 1997]). Here, because the MVPD officers, as law enforcement officials, were acting within the scope of their employment when they forcibly detained plaintiff — a fact which plaintiff does not dispute — the claim of negligent training and supervision must fail (*see Malay v City of Syracuse*, 151 AD3d 1624, 1626-1627 [4th Dept 2017], *lv denied* 30 NY3d 904 [2017]; *Ashley v City of New York*, 7 AD3d at 743; *Karoon v New York City Tr. Auth.*, 241 AD2d at 324; *see also Brown v City of New York*, 56 Misc 3d 1218[A], *19-20 [Sup Ct, Bronx County 2017], *affd* 170 AD3d 596 [1st Dept 2019]; *Thompson v City of New York*, 50 Misc 3d 1037, 1053-1054 [Sup Ct, Bronx County 2015]).

Notwithstanding the foregoing, "[a] municipality may be held liable under 42 USC § 1983 for its failure to train or adequately supervise its employees 'only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact'" (*Rodgers v City of New York*, 106 AD3d 1068, 1072 [2d Dept 2013], *lv denied* 21 NY3d 864 [2013], *quoting Canton v Harris*, 489 US 378, 388 [1989]). Here, as an initial matter, plaintiff's complaint or bill of particulars failed to allege sufficient facts from which it could be inferred that the City implemented a policy constituting a deliberate indifference to his constitutional rights (*see Rice v New York City Hous. Auth.*, 184 AD2d 627, 627 [2d Dept 1992], *lv denied* 82 NY2d 662 [1993]). Assuming that he had sufficiently pled such an allegation, plaintiff's cause of action for negligent training and supervision is without merit. Hughes testified that there was no need to complete a use of force report in this instance and that one is completed when an officer injures a suspect in contrast to a suspect's prior injuries, or when a suspect injures himself which is ordinarily notated in a police report. Hughes added that use of an arm bar or leg sweet would not require filling out a use of force report. He confirmed that he filled out two supplemental narrative reports about 15 minutes apart because he did not specify that he applied an arm bar in his first report.[11] Gutierrez, without providing details, simply stated that a use of force report must be completed when an officer "use[s] force." Critically, plaintiff "failed to

[11] A review of Hughes' narrative reports reveals that he mentioned the arm bar in the first report but did not indicate that he employed a leg sweep. Hughes' second supplemental narrative report simply states that "I placed [suspect] in an arm bar and swept his legs out from under him in order to get [suspect] on the floor and place him in handcuffs."

identify any specific deficiency in the officers' training or . . . identify any way in which additional training" would have led an MVPD officer to fill out a use of force report in connection with this incident (*Mays v City of Middletown*, 70 AD3d 900, 903-904 [2d Dept 2010]). Based on the foregoing, the City established its entitlement to judgment for dismissing the cause of action for alleged negligent training and supervision of the officers by demonstrating a lack of evidence of deliberate indifference to plaintiff's rights, which is "a necessary element of that cause of action" (*Ellison v City of New Rochelle*, 62 AD3d 830, 833 [2d Dept 2009]; *see Rodgers v City of New York*, 106 AD3d 1068, 1072; *Johnson v Kings County Dist. Attorney's Off.*, 308 AD2d at 293; *see also Rodriguez v City of New York*, 42 Misc 3d 1232(A), *5 [Sup Ct, Richmond County 2014]).

Lastly, given that discovery has closed, and plaintiff has failed to specify the real identities of the named Police Officers John/Jane Does 1-4, all asserted claims against those purported defendants are dismissed without prejudice.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by the parties was not addressed by the court, it is hereby denied. Accordingly, it is hereby:

ORDERED that the motion of THE CITY OF MOUNT VERNON, POLICE OFFICER RYAN HUGHES (BADGE NO. 2088), POLICE OFFICER JAMES MCPARTLAND (BADGE NO. 2210), POLICE OFFICER (Mot. Seq. 1), made pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint of PATRICK WELLER with prejudice is granted in part and denied in part to the extent of this order as set forth herein; and it is further

ORDERED that plaintiff's causes of action for false arrest, false imprisonment, and violations of his rights under the Fourth and Fourteenth Amendments to the United States Constitution for alleged use of excessive use of force and unreasonable seizure are sustained only as against THE CITY OF MOUNT VERNON and POLICE OFFICER RYAN HUGHES (BADGE NO. 2088); and it is further

ORDERED that plaintiff's causes of action for assault and battery, general negligence, malicious prosecution, and negligent training and supervision are hereby dismissed as against all defendants named herein; and it is further

ORDERED that the complaint is dismissed without prejudice as against defendants POLICE OFFICER JAMES MCPARTLAND (BADGE NO. 2210), POLICE OFFICER PEDRO GUTIERREZ (BADGE NO. 2028), and POLICE OFFICERS JOHN/JANE DOES 1-4; and it is further

ORDERED that the caption shall be amended to reflect the determinations made in this decision; and it is further

ORDERED that the remaining parties shall appear at the Settlement Conference Part of the Court, Room 1600, on a date and time to be set hereinafter by said Part.

The foregoing constitutes the decision and order of the court.

Dated: May 5, 2020
White Plains, New York

E N T E R:

/s/ Lawrence H. Ecker, J.S.C.

HON. LAWRENCE H. ECKER, J.S.C.
May 5, 2020, 3:50 p.m.

APPEARANCES:
Parties appearing via NYSCEF.