

**Foudja v City of New York**

2021 NY Slip Op 34256(U)

August 9, 2021

Supreme Court, Bronx County

Docket Number: Index No. 22416/2018E

Judge: Mitchell J. Danziger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 3

-----X  
*Michael Foudja,*

Index No. *22416/18E*

*C*  
*#003*

-against-

Hon. *Mitchell J. Danziger*

Justice Supreme Court

*The City of NY et al.*-----X

The following papers numbered 1 to \_\_\_\_\_ were read on this motion ( Seq. No. *003* )  
for *SJ/Dismissal.* noticed on \_\_\_\_\_.

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). <i>1</i>
Answering Affidavit and Exhibits	No(s). <i>2</i>
Replying Affidavit and Exhibits	No(s). <i>3</i>

Upon the foregoing papers, it is ordered that this motion is

Motion is Respectfully Referred to Justice:  
Dated: \_\_\_\_\_

**THIS MOTION IS DECIDED IN ACCORDANCE  
WITH THE ACCOMPANYING MEMORANDUM DECISION**

Dated: *8/9/21*

Hon. *MJD*  
Mitchell J. Danziger, JSC

- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY     CASE STILL ACTIVE
- 2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
- 3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER     SCHEDULE APPEARANCE  
 FIDUCIARY APPOINTMENT     REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
MICHAEL FOUJJA,

Plaintiff,

Index No.: 22416/2018E

**DECISION/ORDER**

**Present:**

**HON. MITCHELL J. DANZIGER**

-against-

THE CITY OF NEW YORK, and JOHN DOES-Police  
Officers as yet unidentified,

Defendants.

-----X  
Recitation as Required by CPLR §2219(a): The following papers  
were read on this Motion to Dismiss and for Summary Judgment

Papers Numbered

Notice of Motion, Affirmation in Support with Exhibits....

1

Affirmation in Opposition.....

2

Affirmation in Reply.....

3

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Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Motion by defendant, the City of New York, to dismiss and for summary judgment pursuant to CPLR §§ 3211 and 3212, as to plaintiff, Michael Foudja’ s claims for federal and state false arrest, federal and state false imprisonment, negligent hiring and retention, federal claims pursuant to 42 U.S.C. § 1983, federal excessive force, negligent infliction of emotional distress, intentional infliction of emotional distress, punitive damages, and claims against unnamed officers, is granted.

As an initial matter, plaintiff does not oppose the City’s statement of material fact or submit to the Court an alternate version of material facts. As such, the City’s material statement of facts is deemed admitted. (Uniform Court Rule 202.8-g(c)). Plaintiff does not oppose the portions of the City’s motion seeking dismissal of plaintiff’s claims of negligent hiring, retention, and training, Federal Law claims pursuant to 42 U.S.C. § 1983 including excessive force, intentional and negligent infliction of emotional distress, punitive damages, and claims against “John Doe” police officers; therefore, these unopposed portions of the motion are granted as a matter of law.

This action stems from plaintiff's arrest on May 1, 2017 at 1147 East 212 Street, Bronx, New York. The City states that non-party police officers Faber and Londono were on patrol when they received a call about a robbery in progress to which they responded. Upon arriving at the corner of 213<sup>th</sup> Street and Laconia Avenue, Bronx, New York, Officer Londono was informed by a male that he was robbed. Complainant and officers canvassed the area in the police vehicle. During this time, complainant identified two males, approximately 3-5 blocks from where the officers and complainant met, as the individuals who robbed him. At this time the officers exited their vehicles and Officer Faber ordered the males to stop after which the males fled resulting in a pursuit. Officer Faber apprehended and detained plaintiff and escorted him to the police vehicle where the complainant was seated. Complainant was unsure and was unable to remember whether the individuals were those who robbed him. Plaintiff was released and no arrest was effectuated.

The remaining portion of the motion for this Court to decide are plaintiff's state law claim for false arrest and false imprisonment. The City contends that the false arrest and false imprisonment claims must be dismissed because there was probable cause to detain plaintiff based on the information provided by an identified citizen complainant. Plaintiff argues that there is a question of fact regarding whether the officers had probable cause to detain Mr. Foudja.

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Summary judgment will only be granted if there are no material, triable issues of fact. (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Once movant has met his initial burden on summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]).

Probable cause consists of facts and circumstances that would lead a reasonably prudent person in like circumstances to believe plaintiff guilty. (*Colon v. City of New York*, 60 N.Y.2d 78, 82 [1983]). A party may act with probable cause even though mistaken. (*Id.*). The existence of probable cause is measured at the moment of the arrest. (*Beck v. Ohio*, 379 U.S. 89 [1964]).

“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.” (*Medina v. City of New York*, 102 A.D.3d 101 [1st Dept. 2012]). Absent materially impeaching circumstances, an officer has probable cause to arrest if the complaining victim of an offense: (1) communicates to the arresting officer information affording credible ground for believing the offense was committed, and (2) identifies the accused as the perpetrator. (*Id.*).

Here, Officers Faber and Londono acquired probable cause or reasonable suspicion to detain plaintiff based on the accusations of an identified citizen complainant who stated that he was the victim of a robbery. Complainant pointed to plaintiff, and informed Officer Londono, and identified him as the person believed to have committed the crime. Plaintiff’s contention that there was no probable cause because the initial description the complainant gave differed from the physical characteristics of plaintiff is insufficient to present an issue of fact when the complaining victim pointed at the plaintiff. It is well established that the information provided to police by an identified citizen who are the victims of the crime reported is presumed reliable. (*Shapiro v. County of Nassau*, 202 A.D.2d 358 [1st Dept. 1993]). As such, the officers had probable cause to detain plaintiff. Moreover, the officers then conducted further inquiry by having the complaining victim identify plaintiff up close. When the complaining victim could not identify the plaintiff, he was released.

Based on the foregoing, the City’s motion is granted in its entirety. The City is directed to serve a copy of this order with notice of its entry, upon the plaintiff within thirty (30) days of the entry date.

The above constitutes the decision and judgment of the Court.

Dated: 8/9/21  
Bronx, New York

  
\_\_\_\_\_  
HON. MITCHELL J. DANZIGER, J.S.C.