

**Marshall v City of New York**

2023 NY Slip Op 32154(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 156578/2015

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

<p><b>PRESENT:</b> <u>HON. JUDY H. KIM</u></p> <p style="text-align: right; margin-right: 50px;"><i>Justice</i></p> <p>-----X</p> <p>TRAVIS MARSHALL,</p> <p style="text-align: right; margin-right: 50px;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>THE CITY OF NEW YORK,</p> <p style="text-align: right; margin-right: 50px;">Defendant.</p> <p>-----X</p>	<p><b>PART</b> <span style="float: right;"><b>05RCP</b></span></p> <p><b>INDEX NO.</b> <u>156578/2015</u></p> <p><b>MOTION DATE</b> <u>01/31/2023</u></p> <p><b>MOTION SEQ. NO.</b> <u>002</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44  
were read on this motion for JUDGMENT - SUMMARY.

Upon the foregoing documents, the City of New York's motion for summary judgment is granted for the reasons set forth below.

On June 30, 2015, plaintiff commenced this action against the City of New York (the "City") arising out of his April 2, 2014 arrest. As pertinent here, plaintiff asserts a claim for false arrest<sup>1</sup>. At his examination before trial ("EBT"), plaintiff testified that on April 2, 2014 he was at home in his apartment at 1649 Amsterdam Avenue, New York, New York (the "Building") and went downstairs to the lobby to get some fresh air at approximately 3:30 p.m. (*Id.* at pp. 7, 13-14). While downstairs, plaintiff observed Donald Wilkinson, a former resident of the Building, speaking to a female police officer (*Id.* at pp. 15). The police officer with whom Wilkinson was speaking asked plaintiff to approach them (*Id.* at pp. 19-20). After approaching, plaintiff asked Wilkinson about fifty dollars he believed Wilkinson owed him (NYSCEF Doc. No. 37 [EBT Errata

<sup>1</sup> All the other causes of action set forth the complaint have been voluntarily discontinued by plaintiff (NYSCEF Doc. No. 30 [Schwartz Affirm. in Opp. at ¶3]).

Sheet at ¶2]). The police officer then informed plaintiff that Wilkinson had an order of protection against him and arrested him for violating this order of protection (Id. at p. 20).

The NYPD officer who arrested plaintiff, Caroline Gehm, also testified at an EBT. She testified that on April 2, 2014, she received a report from a 911 dispatcher about a dispute and violation of an order of protection at 1649 Amsterdam Avenue (NYSCEF Doc. No. 32 [Gehm EBT at p. 10]). Officer Gehm testified that the 911 dispatcher stated, specifically, that Wilkinson had reported that plaintiff had told him he would kill him after that order of protection expired (Id.).

At the scene, Officer Gehm spoke to Wilkinson, who stated that he had an order of protection against plaintiff and that plaintiff had, earlier that day, told him he was going to kill him when that order of protection expired (Id. at pp. 11-13). Officer Gehm subsequently verified that this order of protection existed (Id. at pp. 13, 45). She testified that while she was standing with Wilkinson outside the Building, plaintiff walked outside and Wilkinson identified him (Id. at p. 42). She added that when she spoke with plaintiff prior to his arrest, he stated that he had previously asked Wilkinson about the fifty dollars owed to him (Id. at pp. 42-43).

While Officer Gehm testified that she vaguely recalled that Wilkinson “either used to live in the building or lived in the building” she subsequently stated that she was aware, on the date in question, that Wilkinson currently lived in the Bronx (Id. at pp. 12, 29, 44). At her EBT, Officer Gehm reviewed the order of protection issued against plaintiff on July 3, 2012, which expired on July 2, 2014 (Id. at p. 32).

The City now moves, pursuant to CPLR §3212, for an order granting it summary judgment dismissing plaintiff’s complaint on the grounds that Officer Gehm had probable cause to arrest

plaintiff. In connection with its motion, the City submits the two EBT transcripts discussed supra and the order of protection in question (NYSCEF Doc. No. 34 [Order of Protection])

In opposition<sup>2</sup>, plaintiff argues, in essence, that

[t]his case fundamentally involves a police officer who acted with a “trigger finger.” She arrested plaintiff only because she witnessed plaintiff say to another person, who had a three-year-old Order of Protection going back to a time when he lived in plaintiff’s building, and who had traveled from the Bronx to plaintiff’s Harlem address, “All I asked him was where is my \$50.” According to the officer that statement, made in front of the protected person, put plaintiff in violation of the Order of Protection

(NYSCEF Doc. No. 40 [Schwartz Affirm. in Opp. at ¶12]).

### DISCUSSION

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [internal citations omitted]).

The City has met its burden here through undisputed proof establishing that Officer Gehm had probable cause to arrest plaintiff. “Probable cause to believe that a person committed a crime is a complete defense to a cause of action alleging false arrest or false imprisonment” (Nasca v Sgro, 130 AD3d 588, 589-90 [2d Dept 2015] [internal citations omitted]). “Probable cause requires

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<sup>2</sup> Defendant notes that plaintiff’s opposition was submitted three days past the deadline agreed to by counsel. However, this minimal delay has not prejudiced defendants and plaintiff’s dilatory filing is therefore excused (CPLR §§2004, 2014).

only information sufficient to support a reasonable belief that an offense has been committed and 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” (Id. [internal citations and quotations omitted]).

“As a general rule, information from an identified citizen accusing another individual of the commission of a specific crime is sufficient to provide the police with probable cause to arrest” (Williams v County of Suffolk, 215 AD3d 893, 895-96 [2d Dept 2023] [internal citations omitted] [emphasis in original]). “Indeed, probable cause is established absent materially impeaching circumstances, where the victim of an offense communicates to the arresting officer information affording a credible ground for believing the offense was committed and identifies the accused as the perpetrator” (Id. [emphasis added]).

Probable cause for plaintiff’s arrest existed here, as it is undisputed that Officer Gehm was informed by Wilkinson that plaintiff had violated an order of protection—the existence of which she verified—by threatening to kill him (See Nasca v Sgro, 130 AD3d 588, 589-90 [2d Dept 2015] [“Sgro’s statement that she had an order of protection directing the plaintiff to stay away from her, a copy of the order of protection, and Niblock’s statement that he had observed the plaintiff approach within a few feet of Sgro, conclusively established that the police officers had probable cause to arrest the plaintiff for the crime of criminal contempt in the second degree”]; see also Silverstein v New York City Police Dept., 167 AD3d 961, 963 [2d Dept 2018] [“The infant defendant and her mother specifically identified the plaintiff ... of violating the order of protection in August 2007 ... [which was] legally sufficient to provide the police with probable cause to arrest the plaintiff”]). Plaintiff’s argument that Officer Gehm did not have probable cause to arrest plaintiff relies on a false premise, i.e., that the basis for plaintiff’s arrest was based on Wilkinson’s

statement that plaintiff had threatened to murder him in the future, not his inquiry about the fifty dollars.

Neither were there any materially impeaching circumstances present such that Officer Gehm should have questioned Wilkinson's credibility. To the extent that plaintiff denied making a threat against Wilkinson, "the mere denial by the accused of the complainant's claims will not constitute 'materially impeaching circumstances' or grounds for questioning the complainant's credibility so as to raise a question of fact as to probable cause" (Medina v City of New York, 102 AD3d 101, 105 [1st Dept 2012]). Rather, such 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" (Agront v City of New York, 294 AD2d 189, 190 [1st Dept 2002] [internal citations omitted]).

Finally, the fact that Wilkinson was returning to the Building, his former home, does not on its face constitute a materially impeaching circumstance mandating further inquiry by Officer Gehm. There is no evidence in the record to suggest that Wilkinson returned to the Building with the intent to cause plaintiff to violate the order of protection, let alone that plaintiff ever suggested such a possibility to Officer Gehm (See Medina v City of New York, 102 AD3d 101, 106 [1st Dept 2012] [plaintiff's suggestion at examination before trial that child's accusations were prompted by her mother in response to threats made by plaintiff's wife that plaintiff would seek custody of child did not present materially impeaching circumstances where there was no showing that this theory was presented to the police at or around the time of plaintiff's arrest]).

In light of the foregoing, it is

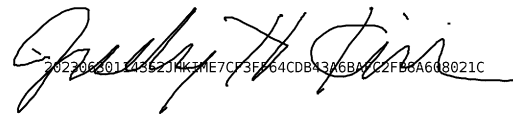
**ORDERED** that the City of New York’s motion for summary judgment is granted and this action is hereby dismissed; and it is further

**ORDERED** that within fifteen days of the date of this decision and order counsel for the City of New York shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

**ORDERED** that counsel for the City of New York is directed to serve a copy of this decision and order, with notice of entry, upon plaintiff within fifteen days of the date of this decision and order; and it is further

**ORDERED** that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “Efiling” page on this Court’s website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)).

This constitutes the decision and order of the Court.



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6/30/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: