

Carrion v City of New York

2024 NY Slip Op 35097(U)

December 3, 2024

Supreme Court, Queens County

Docket Number: Index No. 717755/19

Judge: Kevin J. Kerrigan

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN
Justice

Part 10



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Ray Carrion,

Index
Number: 717755/19

Plaintiff,

- against -

Motion
Date: 11/4/24

Motion Seq. No.: 3

The City of New York, New York City Police Department, Det. Daniel Mulcahy of the 115th Precinct, Tax ID# 934010, Sgt. Robert Balacki of the 115th Precinct, Tax ID#942974, Det. Sean Meade of the 115th Precinct, Tax ID# 942177, Lt. Steven Weiss of the 115th Precinct, Tax ID# 924615, Det. Melissa Joss of the 115th Precinct, Tax ID# 947925, Cpt. Ernest Pappas of the 115th Precinct, Tax ID# 883166 and Hussain Mujtava a/k/a Jason,

Defendants.

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The following papers numbered E34-E63 read on this motion by Defendants, The City of New York and New York City Police Department, for summary judgment.

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	E34-53
Affirmation in Opposition-Exhibits.....	E54-61
Reply.....	E62-63

Upon the foregoing papers it is ordered that the motion is decided as follows:

Motion by Defendants, The City of New York and New York City Police Department, for summary judgment is granted solely to the extent that the causes of action for negligent hiring and retention, general negligence, negligent investigation, and claims

pursuant to Monell are hereby dismissed. The branches of the motion for summary judgment, dismissing the causes of action for false arrest, false imprisonment, and malicious prosecution are denied.

The Court notes that the instant motion is made solely on behalf of the City of New York and the New York City Police Department. The moving Defendants are the only Defendants who have appeared in this action. Plaintiff filed a motion for default judgment against Hussain Mujtava in February of 2020. However, the motion was marked off this Court's calendar and was never re-filed. No default judgment has been taken against the remaining Defendants and it appears Plaintiff's time to request a default judgment has now expired.

By way of background, Plaintiff was arrested on March 23, 2017 for shooting his co-worker, Defendant Hussain Mujtava. Plaintiff and Mujtava were both employed by a limo company named 855 Limo, which was co-owned by Mujtava's father and an individual named Mohammed Saleh. Plaintiff was arrested after Mujtava identified Plaintiff and a judge issued a warrant for his arrest. Plaintiff was indicted by a grand jury, however all charges were thereafter dismissed on September 6, 2018.

Per the annexed NYPD investigation records, Mujtava was sitting in his vehicle in front of 35-30 80th Street in Queens County on October 10, 2015 when a hooded man approached his vehicle. The man fired nine shots into the vehicle, striking Mujtava multiple times. Mujtava exited the vehicle to run after the gunman, and fell to the ground. Mujtava was taken to Elmhurst Hospital in critical condition. NYPD Sergeant, Daniel Mulcahy was the initial lead detective on the case.

During the course of his investigation, Sergeant Mulcahy was informed by Saleh that Mujtava and Plaintiff's ex-wife, Dorissa Horta, were engaged in a relationship. Saleh showed Sergeant Mulcahy a video of the pair. Plaintiff had also apparently sent Saleh photographs of Horta and Mujtava kissing and holding hands. Plaintiff purportedly telephoned Saleh and threatened to come to the office and make a scene if Saleh did not arrange a meeting with Mujtava's father to discuss the situation. Plaintiff also purportedly threatened bodily harm to Mujtava. The forgoing is disputed by Plaintiff, who testified that he felt bad, but was not upset.

In January of 2016, Detective Sean Meade took over the case. Plaintiff was a person of interest at that time. NYPD used pings of Plaintiff's cell phone, which raises suspicion regarding his whereabouts. About three hours prior to the shooting, Plaintiff was

in New Jersey. Plaintiff was in New York about two hours prior to the shooting per a telephone call he made. His phone was then turned off and not turned back on until after the shooting, and when he was located back in New Jersey.

Mujtava was first interviewed by the NYPD on November 19, 2015 while he was still admitted to Elmhurst Hospital. He indicated to the then Detective, Sergeant Mulcahy, that he did not remember seeing the perpetrator's face. However, he did detail his relationship with Dorissa Horta and indicated that she was the ex-wife of his colleague, Ray Carrion. He also described the bad blood between Carrion and himself. On December 19, 2015 at the 115th precinct, Sergeant Mulcahy showed Mujtava the surveillance video wherein an individual, the shooter, is observed running from the scene. After watching the video, Mujtava was unable to identify the individual in the video, or the shooter. On February 17, 2016, Detective Meade conducted an interview with Mujtava at the 115th precinct. At that time, Mujtava provided additional information about his Father's business and the relationship with his business partner. Mujtava did not provide any additional information regarding the identification of the shooter. One year later on February 9, 2017, Mujtava appeared at the 115th precinct unprompted and write a statement indicating that Plaintiff was the individual who shot him. He informed Detective Meade that he remembered additional details about the shooting whilst undergoing therapy. Confirmation of identification was completed through a photograph of Plaintiff contained in NYPD's computer database. Based upon the identification, Detective Meade requested an "I-Card" for Plaintiff's arrest in conjunction with the NYPD Legal Bureau and the Queens County District Attorney's Office.

Notably, one of the witnesses who was interviewed and who lived in a nearby apartment building stated that the shooter was a masked black male. Detective Meade also appeared to testify that other witnesses in nearby buildings observed the shooter wearing a mask. It does not appear that Plaintiff ever indicated or was asked whether the shooter was wearing a mask.

Plaintiff was apprehended in New Jersey and a warrant was issued for his arrest. He was extradited to New York on March 23, 2017 pursuant to the warrant. The Queens County District Attorney's office presented the case to a grand jury, and Plaintiff was indicted on charges of attempted murder, second degree murder, assault in the first degree, and criminal possession of a weapon in the second degree. All charges were dismissed on September 6, 2018. Plaintiff was ultimately incarcerated for thirteen months prior to making bail. Plaintiff testified that he does not know why the charges were ultimately dismissed.

The City contends that it is entitled to summary judgment because the NYPD had probable cause to arrest Plaintiff based upon Mujtava's identification of him, the arrest warrant, and the grand jury indictment, Plaintiff failed to sufficiently plead a cause of action for malicious prosecution, the officers involved were acting within the scope of their employment, the negligence claims are not viable since the gravamen of the complaint involves intentional torts, intentional investigation is not actionable, and Plaintiff failed to sufficiently plead a claim pursuant to 42 USC §1983.

False Arrest and False Imprisonment Claims

The branch of the motion for summary judgment, dismissing Plaintiffs' State and Federal claims of false arrest and false imprisonment is denied.

A finding of probable cause operates as a complete defense to causes of action for false arrest and false imprisonment (see Gottlieb v. City of New York, 219 A.D.3d 591 [2d Dept. 2023]; Carlton v. Nassau County Police Dept., 306 A.D.2d 365 [2d Dept. 2003]). Probable cause 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 or is being committed by the suspected individual" and it must be "judged under the totality of the circumstances" (see Fields v. County of Nassau, 219 A.D.3d 882 [2d Dept. 2023]). "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 drawn therefrom" (see Webster v. City of New York, 181 A.D.3d 756 [2d Dept. 2020]).

Here, Movant contends that Mujtava's identification of Plaintiff as the shooter was sufficient to provide the NYPD with probable cause. Indeed, an arrest based upon "an accusation against a specific individual from an identified citizen is presumed reliable" absent "materially impeaching circumstances" (see Williams v. County of Suffolk, 215 A.D.3d 893 [2d Dept. 2023]; People v. Gonzalez, 138 A.D.2d 622 [2d Dept. 1988]). Where such materially impeaching circumstances exist, and the police are aware of such circumstances, there may be a ground to question the complainant's credibility (see Williams, 215 A.D.3d at 893). Moreover, the failure by the police to inquire further when a reasonable person would inquire further, may be evidence of a lack of probable cause (see id.). Additionally, where an arrest warrant has been issued, there is a presumption that the arrest was made with probable cause and precludes liability for false arrest, false imprisonment, and malicious prosecution (see Martinez v. City of New York, 153 A.D.3d 803 [2d Dept. 2017]; Washington-Herrera v. Town of Greenburgh, 101 A.D.3d 986 [2d Dept. 2012]). Accordingly,

there is a presumption of probable cause here based upon Mujtava's accusation and based upon the issued arrest warrant.

Thus, the question is whether there are facts here which overcome the presumption of probable cause established by the valid arrest warrant and/or whether there are materially impeaching circumstances which the Officers were aware of or should have been aware of which were grounds for questioning Mujtava's credibility (see Medina v. City of New York, 102 A.D.3d 101 [1st Dept. 2012]). The Court finds there are questions of fact with respect to the credibility of the witness which preclude a grant of summary judgment. While the City has proffered an explanation for the inconsistencies in Mujtava's statements, those inconsistencies should have been thoroughly investigated by the NYPD when Mujtava identified Plaintiff as the shooter and prior to obtaining an I-Card for his arrest. Indeed, Mujtava previously indicated that he did not remember the shooter's face and was unable to identify the shooter from the video surveillance. Later on February 9, 2017, Mujtava's statement provides that Plaintiff was the individual who shot him. He does not elaborate on how he suddenly identified Plaintiff. Detective Meade testified and the City has argued that Mujtava uncovered suppressed memories identifying Plaintiff as the shooter. However, his identification failed to resolve the inconsistencies created by these statements and which raise questions as to his credibility. Moreover, Plaintiff raises questions as to Mujtava's credibility where were not addressed by Detective Meade or by the City on summary judgment. Namely, how long, with whom, and where Plaintiff had been treating and any medications he may have been on. Meade also admittedly was never informed that Mujtava had been experiencing memory issues nor are any memory issues noted in the investigation file. Also, the Court notes that it does not appear that Mujtava was ever asked whether the shooter was wearing a mask at the time of the shooting. Any failure by Detective Meade to flush out the credibility issues is not, as the City contends, a negligent investigation issues, which is not a viable claim. Rather, that burden was on the Officers to identify and investigate a witness's credibility. Thus, while the explanations proffered by Mujtava with respect to his memory loss may cure any credibility issues, this Court must grant plaintiff every favorable inference on summary judgment and because summary judgment is a drastic remedy (see Rudnitsky v. Robbins, 191 A.d.2d 488 [2d Dept. 1993]), the instant branch of the motion must be denied.

Accordingly, the branch of the motion for summary judgment, dismissing the claims for false arrest and false imprisonment is denied.

Malicious Prosecution

The branch of the motion for summary judgment, dismissing Plaintiffs' claim for malicious prosecution is denied.

The elements of a cause of action for malicious prosecution are as follows: a) the commencement of a criminal proceeding by the defendant against the plaintiff, b) termination of the proceeding in favor of the accused, c) absence of probable cause for the proceeding, and d) actual malice (see Broughton v. State, 37 N.Y.2d 451 [1975]; Wieder v. Home Depot U.S.A., Inc., 208 A.D.3d 535 [2d Dept. 2022]). The crux of the City's motion with respect to the claim for malicious prosecution is that there was probable cause to arrest Plaintiff. Based on the analysis supra, the Court has found that there is a question of fact as to probable cause. Moreover, a review of the summons and complaint provides that the claim for malicious prosecution was not so insufficiently plead as to warrant dismissal.

Accordingly, the branch of the motion for summary judgment dismissing the claim for malicious prosecution is denied.

Negligent Hiring and Retention

The branch of the motion for summary judgment, dismissing Plaintiff's claims for negligent hiring and retention is granted, there appearing no opposition.

It is a well-established principle that no action for negligent hiring, training or retention may be maintained against an employer for the acts of an employee acting within the scope of his or her employment, since the employer would be liable under the doctrine of respondeat superior and, therefore, a cause of action for negligent hiring, training and retention would be entirely redundant (see Ashley v. City of New York, 7 A.D.3d 742 [2d Dept. 2004]; Karoon v. NYC Transit Authority, 241 A.D.2d 323 [1st Dept. 1997]). "This is because if the employee was not negligent, there is no basis for imposing liability on the employer, and if the employee was negligent, the employer must pay the judgment regardless of the reasonableness of the hiring or retention or the adequacy of the training" (see Karoon, 241 A.D.2d at 324). This principle applies to the instant matter, even as to plaintiff's claims alleging assault. An employee may be found to have acted within the scope of his employment even with respect to intentional torts and, therefore, his employer may be liable under respondeat superior (see Choi v. D&D Novelties, 157 A.D.2d 777 [2d Dept 1990]). An assault by a police officer who is engaged in police business may be found to be within the scope of his employment (see generally Garcia v. City of New York, 104 A.D.2d 438 [2d Dept. 1984]).

Where the employer concedes that its employee was acting within the scope of his employment in the commission of the allegedly tortious act, no cause of action lies for negligent hiring, training or supervision, as a matter of law (see Ashley, 7 A.D.3d 742; Rosetti v. Board of Education, 277 A.D.2d 668 [3rd Dept. 2000]). Here, the City does not dispute, but concedes that the named NYPD employees were not only employed by the City but acting within the scope and course of their employment. Accordingly, the cause of action for negligent hiring, training, supervision, and retention is hereby dismissed.

General Negligence Claim

The branch of the motion for summary judgment, dismissing Plaintiff's claim for negligent is granted, there appearing no opposition. To the extent that Plaintiff seeks to recover under principles of general negligence, those claims are hereby dismissed. It is well-settled that in actions where Plaintiff seeks damages for injuries resulting from false arrest, false imprisonment, and malicious prosecution, Plaintiff cannot recover under broad negligence principles. Rather, Plaintiff must proceed by way of the traditional remedies under those causes of action (see Santoro v. Town of Smithtown, 40 A.D.3d 736 [2d Dept. 2007]; Johnson v. Kings County DA's Office, 308 A.D.2d [2d Dept. 2003]; Ferguson v. Dollar Rent A Car, Inc., 102 A.D.3d 600 [1st Dept. 2013]).

Negligent Investigation

The branch of the motion for summary judgment, dismissing Plaintiff's claim for negligent investigation is granted, there appearing no opposition. It is well-settled that New York Courts do not recognize causes of action for negligent investigation (see Jueress v. Millbrook Cent. Sch. Dist., 161 A.D.3d 967 [2d Dept. 2018]; Hines v. City of New York, 142 A.D.3d 586 [2d Dept. 2016]; Medina v. City of New York, 102 A.D.3d 101 [1st Dept. 2012]; Hart v. County of Erie, 189 A.D.3d 2123 [4th Dept. 2020]).

Monell Claims

The branch of the motion to dismiss Plaintiff's Monell claims is granted, there appearing no opposition.

The only vehicle for an individual to seek a civil remedy for violations of constitutional rights committed under color of any statute, ordinance, regulation, custom or usage of any State is a claim brought pursuant to 42 U.S.C. §1983 (see generally Manti v New York City Transit Auth., 165 A.D.2d 373 [1st Dept 1991]). However, a municipality may only be found liable under 42 U.S.C. §1983 where plaintiff specifically pleads and proves an official policy or custom that causes plaintiff to be subjected to a denial

of a constitutional right (see Monell v. Department of Social Services, 436 U.S. 658 [1978]). A municipality cannot be held liable under a theory of respondeat superior for the unconstitutional acts of its employees, but may be found liable under §1983 "only where the municipality itself causes the constitutional violation at issue. In other words, 'it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983" (Johnson v. King County District Attorney's Office, 308 A.D.2d 278, 293 [2d Dept. 2003]).

Here, Plaintiff's complaint is devoid of a sufficiently plead Monell claim. Indeed, Plaintiff concedes as much in opposition.

Finally, the Court sua sponte finds that the NYPD is not a distinct sueable entity but merely an agency of the City of New York (see Reohlehr v. New York City Police Dept., 151 A.D.3d 1093 [2d Dept. 2017]). Therefore, it is not a cognizable party and the complaint must be dismissed as against it (see id.).

Accordingly, the motion is granted solely to the extent that the causes of action for negligent hiring and retention, general negligence, negligent investigation, and claims pursuant to Monell are hereby dismissed. The branches of the motion for summary judgment, dismissing the causes of action for false arrest, false imprisonment, and malicious prosecution are denied.

Serve a copy of this order with notice of entry upon all parties without undue delay.

Dated: December 3, 2024



KEVIN J. KERRIGAN, J.S.C.

