

**Morrison v New York City Police Dept.**

2025 NY Slip Op 34990(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 161232/2019

Judge: Ariel D. Chesler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARIEL D. CHESLER PART 62M

Justice

-----X

INDEX NO. 161232/2019

MICHAEL MORRISON,

MOTION DATE 08/07/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY POLICE DEPARTMENT, THE CITY OF
NEW YORK, JOHN DOES

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18,
19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 40

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, it is

In this proceeding, defendants move for an Order pursuant to CPLR 3212 (1) granting
summary judgment and dismissing plaintiff's state law claims of false arrest and false
imprisonment; (2) dismissing plaintiff's claim of intentional infliction of emotional distress
("IIED") because such claims may not be brought against a governmental entity; (3) dismissing
plaintiff's claims of negligent infliction of emotional distress ("NIED") as they are duplicative of
his false arrest claims; (4) dismissing plaintiff's state law claim of negligent hiring, training,
retention and supervision as insufficiently pled; (5) pursuant to CPLR 3211 (a)(7) and 3212
dismissing plaintiff's assault & battery claims because plaintiff was handcuffed under a lawful
privilege and no other force is alleged; (6) pursuant to CPLR 3211 (a)(7) dismissing plaintiff's
federal law claims as there are no individually named officers; (7) pursuant to CPLR 3211 (a)(7)
dismissing plaintiff's claims against the New York Police Department ("NYPD") as it is a non-

jural entity; and (8) pursuant to CPLR 3211 (a)(7) dismissing any other claim not expressly noted in the complaint and not addressed above as insufficiently pled.

### BACKGROUND

On or about August 20, 2018, plaintiff was a patron of Orbit Nightclub located at 637 West 50<sup>th</sup> Street. Shortly after, plaintiff was taken to Mount Sinai hospital after suffering a gunshot wound to his left thigh. While at the hospital, plaintiff provided a false name, Akeem Grant, which was documented in his medical records and noted by responding officers upon observing the name on plaintiff's hospital wristband. Investigating officers obtained a photograph of plaintiff, and after running it through facial recognition, they confirmed the victim in the hospital was in fact, Michael Morrison.

About two hours after the shooting, an eyewitness called 911 and detailed to the operator what she observed. Following that conversation, the eyewitness agreed to appear at the Midtown North Detective Squad to provide a detailed statement, in which she stated that she observed plaintiff remove a handgun from his person and discharge it into his own leg. Following the statement, a blind photo array was conducted, in which Detective Eastman- now Detective McDowell- created the six-pack, which was then administered by Detective Walter Sledge, who had no knowledge of the underlying facts of the investigation. After the administration of the photo array, the eyewitness made a positive identification of the plaintiff as the person she saw at the nightclub holding the handgun.

Upon release from the hospital, plaintiff was placed under arrest. Plaintiff was eventually charged with (1) Penal Law 265.03(1)(b)-Criminal Possession of a Weapon in the Second Degree, (2) Penal Law 265.03(3)-Criminal Possession of a Weapon in the Second Degree, and (3) Penal Law 120.25-Reckless Endangerment in the First Degree. Following arraignment, bail

was set, and plaintiff was remanded to Riker's Island. On or about February 25, 2019, the charges against plaintiff were dismissed.

### ANALYSIS

When a party moves for summary judgment, the movant has the initial burden of proving entitlement to summary judgment (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). "The proponent of 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" (*Alvarez v. Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once the movant has satisfied this standard, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204 [1997]).

To defeat a motion for summary judgment, the opposing party must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Elstein v. City of New York*, 209 AD2d 186 ([1<sup>st</sup> Dept 1994])). Mere conclusions, unsubstantiated allegations or assertions are insufficient to create an issue of fact (*Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable, summary judgment should be denied (*see Celardo v. Bell*, 222 AD2d 547,548, [2d Dept 1995]).

A failure to make a prima facie showing requires the Court to deny the motion, regardless of the sufficiency of opposing papers (*Alvarez*, 68 NY2d at 324; *JMD Holding Corp. v. Congress Financial Corp.*, 4 NY3d 373 [2005]).

Defendants also move for an Order dismissing plaintiff's claim pursuant to CPLR 3211 (a)(7). CPLR 3211 (a)(7) states that "[a] party may move for judgment dismissing one or more

causes of action asserted against him on the ground that...the pleading fails to state a cause of action." While "plaintiffs' allegations are presumed to be true and accorded every favorable inference, conclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss" (*Godfrey v. Spano*, 13 NY3d 358, 373 [2009]).

The Court notes that plaintiff does not oppose the dismissal of his Complaint against the NYPD or his claim of IIED (*see* NYSCEF Doc. No. 31, ¶ 3). As such, plaintiff's IIED claim and his claims against the NYPD are dismissed, and they will not be analyzed below. Additionally, the Court notes that plaintiff asserts defendants move to dismiss his claim for malicious abuse of process (*see* NYSCEF Doc. No. 31, p. 16). However, it is not clear to the Court whether plaintiff is pleading this claim in his Complaint. To the extent he is, the Court finds that it is missing from plaintiff's Notice of Claim (*see* NYSCEF Doc. No. 34) and insufficiently pled, and as such, any claims for malicious abuse of process are dismissed.

#### False Arrest and False Imprisonment

In support of the motion, defendants argue plaintiff's state false arrest and false imprisonment claims fail as a matter of law, as there was probable cause to detain and arrest plaintiff based on the eyewitness identifications. Defendants contend that plaintiff was only arrested after being identified by an eyewitness in a blind photo array as possessing a firearm, providing probable cause for the arrest. Defendants argue there is no indication in the record that any investigating officer had any reason to question the credibility of the eyewitness.

Furthermore, defendants assert that the identification is consistent with the physical evidence in this case where surveillance footage, investigative documents and other witness statements confirm that a shooting took place at Orbit Night Club. Defendants argue that

additional circumstantial evidence supports the witness's credibility, as plaintiff admitted himself to the hospital under a false identity- suggesting an intent to avoid future questioning about the incident by potentially making himself untraceable to law enforcement. Accordingly, defendants argue that the plaintiff's confinement was legally privileged, thereby undermining the prima facie claims for false arrest and false imprisonment.

In opposition, plaintiff argues that his claims for false arrest and false imprisonment should survive because the defendants did not have probable cause for the arrest. Plaintiff argues that an unreliable witness statement does not create probable cause. Specifically, plaintiff contends that the witness, whose call and identification formed the basis of plaintiff's arrest, may have had her own personal or legal incentive to deflect blame. In addition, plaintiff stresses that police found no gun, bullets, or casing in the club or on him (*see* NYSCEF Doc. No. 21, p. 43). Plaintiff also states that defendants do not provide footage of the shooting or alleged 911 call and only rely on hearsay evidence from an anonymous complaining witness. Plaintiff argues his criminal case dismissal ultimately leads to an improper investigation by NYPD. Therefore, plaintiff argues there was no probable cause to arrest him as an NYPD officer arrested him solely based on a complaint by an unreliable witness, and he was investigated by a historically untruthful and unreliable officer.

To prevail on an action for false arrest and imprisonment, "the plaintiff must demonstrate that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, that the plaintiff did not consent to the confinement and that the confinement was not privileged (*De Lourdes Torres v. Jones*, 26 NY3d 742, 759 [2016]). "For purposes of the privilege element of a false arrest and imprisonment claim, an act of confinement is privileged if it stems from a lawful arrest supported by probable cause" (*id.*).

“Probable cause consists of such facts and circumstances as would lead a reasonably prudent person in like circumstances to believe plaintiff guilty” (*Colon v. City of New York*, 60 NY2d 78, 82 [1983]). “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 probable cause must be judged under the totality of the circumstances” (*De Lourdes Torres*, 26 NY3d at 759).

“Where, as here, an arrest is made without a warrant, ‘a presumption arises that it was unlawful, and [defendants have] the burden of proving that...the arrest was based on probable cause’” (*Medina v. City of New York*, 102 AD3d 101, 103 [1<sup>st</sup> Dept 2012] [internal citations omitted]).

“Where the defense of probable cause is based on conflicting evidence, the question is resolved by the jury, but where the facts leading up to the arrest are undisputed, the existence of probable cause is for the court to determine as a matter of law” (*Coleman v. City of New York*, 182 AD2d 200, 203 [1<sup>st</sup> Dept 1992]). “The alleged 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 [1<sup>st</sup> Dept 2002]; *see also Gisondi v. Harrison*, 72 NY2d 280, 285 [1988] [“In any investigation the police are likely to encounter discrepancies, particularly in cases involving eyewitness identification. These matters may impair their ability to prove guilt beyond a reasonable doubt at trial, but they generally have little bearing at preliminary stages where the only relevant concern is whether there is sufficient evidence to show probable cause to believe the defendant committed the crime”]).

Courts have consistently held that probable cause can be established by information given to an officer by an identified citizen (*Kramer v. City of New York*, 173 AD2d 155, 155 [1<sup>st</sup> Dept

1991] [“The information given to the officer by an identified citizen, accusing plaintiff of a specific crime, [it is] legally sufficient to provide the office with probable cause to arrest”]; *see also Okunubi v. City of New York*, 109 AD3d 888, 890 [1<sup>st</sup> Dept 2013][internal citations 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”] [internal citations omitted]; *Onilude v. City of New York*, 226 AD3d 457, 458 [1<sup>st</sup> Dept 2024] [“Probable cause for the subsequent detention of plaintiff was established by the eyewitness’ specific identification of plaintiff from a photograph”]; *Grant v. Barnes & Noble, Inc.*, 284 AD2d 238, 239 [1<sup>st</sup> Dept 2001]).

Pursuant to the foregoing authorities, defendants established they had probable cause to arrest plaintiff based on reliable information they received from an eyewitness that was at the nightclub at the time of the alleged shooting and who further identified plaintiff from a photograph array as the suspect. Contrary to plaintiff’s contentions, there was no evidence presented to establish that the police were “aware of ‘materially impeaching circumstances’ or grounds for questioning the [witness’] credibility” to defeat summary judgment (*Medina v. City of New York*, 102 AD3d 101, 104 [1<sup>st</sup> Dept 2012]).

#### Negligent Infliction of Emotional Distress

Moreover, defendants argue that plaintiff’s claim of NIED should be dismissed as it is duplicative of his false arrest claims. Specifically, they claim that claims of infliction of emotional distress should be dismissed when it “falls well within the ambit of other traditional tort liability.” (*quoting Fischer v. Maloney*, 43 NY2d 553, 558 [1978]). Further, they contend that the negligent infliction of emotional distress claim in this case is based on the same facts as the false arrest and malicious prosecution claims and should thus be dismissed as duplicative,

citing *Leonard v. Reinhardt* (20 AD3d 510, 510 [2d Dept 2005][dismissing claim of intentional infliction of emotional distress as duplicative of malicious prosecution and assault and battery claims]).

In opposition, plaintiff argues that defendants can be held liable for NIED where they denied plaintiff necessary medical care following his arrest, including, failing to provide plaintiff post-operative medication that was described to him after his discharge from the hospital.

Here, plaintiff claims he was forcibly removed from a hospital shortly after undergoing surgery for a gunshot wound in which the hospital discharge papers included instructions for medication, including antibiotics, Advil, and Tylenol, and necessary post-operative care. Plaintiff asserts that despite this, once he was in custody, he was denied access to that medication and received only sporadic wound cleanings, short of what was medically indicated. Moreover, plaintiff argues that since he was in custody, the duty is clear as his healthcare was entirely at the whim of city agents. As such, plaintiff attests, because the officers' failure to provide essential medical care placed Plaintiff at risk of physical harm and foreseeably caused him severe emotional distress, summary judgment on Plaintiff's NIED claim must be denied.

“A cause of action for negligent infliction of emotional distress must be based on allegations of conduct ‘so extreme in degree and outrageous in character as to go beyond all possible bounds of decency, so as to be regarded as atrocious and utterly intolerable in a civilized community’” (*Wolkstein v. Morgenstern*, 275 AD2d 635, 636-37 [1<sup>st</sup> Dept 2000]). “Such extreme and outrageous conduct must be clearly alleged in the pleadings to survive dismissal” (*Dillon v. City of New York*, 261 AD2d 34, 41 [1<sup>st</sup> Dept 1999]).

Here, the cause of action alleging negligent infliction of emotional distress should have been dismissed as duplicative of the causes of action alleging false arrest and false

imprisonment. Moreover, plaintiff fails to allege any “extreme and outrageous conduct” in his Complaint. As such, plaintiff’s claim for NIED must be dismissed.

Negligent Hiring, Training and Retention

Regarding plaintiff’s claim for negligent hiring, retention and training, defendants argue plaintiff failed to properly plead the claim. Additionally, defendants argue the identity of the tortfeasor employee is not named within Plaintiff’s suit. Defendants also contend that plaintiff has also not alleged with the requisite specificity how the tortfeasor employee’s hiring, training, retention, and supervision was somehow deficient. Defendants note it is merely stated in plaintiff’s pleadings that defendants acted with “negligence, carelessness and recklessness.” As such, defendants argue plaintiff’s claims of negligent hiring, training and retention and supervision should be dismissed.

In opposition, plaintiff argues that here, Detective Williams has a long history of complaints, lawsuits, and discipline in relation to his employment as a police officer. Plaintiff stresses that the NYPD knew as early as 2011, when Detective Williams had his first civilian complaint for use of force, that he may be a liability to the department and to the City of New York. Plaintiff asserts the NYPD continued to retain him knowing that he could pose a risk to public safety, and may continue to falsely arrest civilians, as he did with plaintiff. In addition, plaintiff attests that the criminal case against him was ultimately dismissed, but not before he spent weeks on Riker’s Island where he was denied medical care and had to spend \$25,000 for a criminal defense on a case that should have never begun. Plaintiff contends that it is not within the scope of a police officer’s duty to falsely arrest a person while relying on “faulty or racist information in their reports to the prosecutor’s office” (*see* NYSCEF Doc. No. 31, ¶ 117).

Plaintiff also argues Detective Williams failed due to consistently poor training and hiring by the City of New York, where he has been sued previously, and the NYPD continues to retain him. As a result of the officer's conduct, plaintiff argues his life has been negatively impacted. Thus, plaintiff asserts another question of material facts exists as to whether the City of New York properly fulfilled their duty to properly hire, train, and supervise its employees.

“Generally, where an employee is acting within the scope of his or her employment, thereby rendering the employer liable for any damages caused by the employee's negligence under a theory of respondeat superior, no claim may proceed against the employer for negligent hiring or retention” (*Karoon v. New York City Transit Authority*, 241 AD2d 323, 324 [1<sup>st</sup> Dept 1997]). “[A]n exception exists to this general principle where the injured plaintiff is seeking punitive damages from the employer based on alleged gross negligence in the hiring or retention of the employee...” (*id.* [internal citations omitted]). However, that exception does not apply here (*id.* [“The Court of Appeals has clearly held that the State and its political subdivisions, as well as public benefit corporations...are not subject to punitive damages”]).

Accordingly, because the exception for punitive damages does not apply, and since Detective Williams was clearly acting within the scope of his employment, plaintiff has failed to state a claim for negligent hiring, training, and retention, and the claim must be dismissed.

#### State Law Assault and Battery

Defendants argue plaintiff's claims of assault and battery must be dismissed because the officers used a reasonable amount of force during the course of plaintiff's lawful arrests. Defendants stress that, here, there was probable cause for the plaintiff's arrest based on the eyewitness' identification of plaintiff (*see* NYSCEF Doc. No. 21), and as such, officers were otherwise privileged to touch plaintiff to effectuate the arrest. Furthermore, defendants argue

plaintiff admitted in his 50-H hearing that the officers involved in his arrest did not assault him (*see* NYSCEF Doc. No 18, p. 26). Lastly, defendants argue there are no allegations of physical injuries suffered by plaintiff as a result of his arrest. Accordingly, defendants assert plaintiff's claims of assault & battery should be dismissed.

It seems to the Court that plaintiff fails to raise any arguments in his opposition regarding his claims of assault and battery.

Here, as determined above by the Court, probable cause existed for plaintiff's arrest, and the fact the record is devoid of any evidence that excessive force was used. Therefore, defendants' motion for summary judgment on plaintiff's claims of assault and battery is granted (*Fowler v. City of New York*, 156 AD3d 512, 513 [1<sup>st</sup> Dept 2017]; *Marrero v. City of New York*, 33 AD3d 556, 557-58 [1<sup>st</sup> Dept 2006]).

#### 42 U.S.C § 1983

Similarly, defendants argue that plaintiff's claim, seeking to recover pursuant to 42 U.S.C §1983, must be dismissed because plaintiff failed to name individual officers as defendants. Defendants further argue it is well established that while a plaintiff may pursue constitutional causes of action against individual state actors, a plaintiff may not hold a municipality liable pursuant to 42 U.S.C §1983 under a theory of respondeat superior. Defendants contend that a plaintiff seeking relief under 42 U.S.C. §1983 must therefore name the individual state actors who allegedly violated his or her civil rights, which plaintiff has failed to do in the complaint. Defendants argue, in this case, the failure to include an individually named officer is fatal to any possible federal claim and all such claims, if plead, must be dismissed.

In turn, plaintiff argues that his federal *Monell* claim must not be dismissed because it is properly pled. Plaintiff asserts that, in his Complaint, he explained the intentional false arrest,

and false imprisonment by defendants violated the rights of the plaintiff as guaranteed by the Fourth, Fifth, and Eighth Amendments to the United States Constitution, as well as the corresponding sections of the New York State Constitution, for which defendants are individually liable. Further, plaintiff argues despite having no lawful authority to arrest him, defendants unlawfully arrested him with actual malice toward him and with willful and wanton indifference to and deliberate disregard for his constitutional rights.

Plaintiff argues he successfully plead more than just the arrest as in his Complaint he states that he was profiled, falsely arrested, falsely imprisoned and maliciously prosecuted by defendants in a manner that was extreme, outrageous, and unjustified. Moreover, plaintiff argues he also properly asserted that individual officers harmed him, despite not knowing the name of any specific officer, and the Complaint successfully asserts that the arresting officer failed to exercise meet the standard of a careful or prudent police officer. Thus, plaintiff asserts the state and federal claims brought under § 1983 are adequately pled: officers violated his constitutional rights, and each defendant's actions or omissions that led to those violations.

Here, Plaintiff's 42 USC 1983 Claim must also be dismissed since he fails to sufficiently allege an official municipal policy or custom which resulted in a violation of his constitutional rights (*see De Lourdes Torres*, NY3d at 762; *Bouet v. City of New York*, 125 AD3d 539, 540-541 [1<sup>st</sup> Dept 2015] ["Complaint also fails to set forth claim...under 42 U.S.C. §1983, because it does not allege the municipality had a custom or an official policy that caused the claimed violation to plaintiff's constitutional rights or that the City's purported failure to train or supervise its employees was tantamount to an official policy of custom under this statute]).

Accordingly, it is hereby

ORDERED, defendants motion for an Order granting summary judgment and dismissing plaintiff's state law claims of false arrest and false imprisonment is granted; and it is further

ORDERED, defendants motion for an Order dismissing plaintiff's claim of IIED is granted; and it is further

ORDERED, defendants motion for an Order dismissing plaintiff's claim of NIED is granted; and it is further

ORDERED, defendants motion dismissing plaintiff's state law claim of negligent hiring, training, retention and supervision is granted; and it is further

ORDERED, defendants motion dismissing plaintiff's assault and battery claims is granted; and it is further

ORDERED. defendants motion dismissing plaintiff's federal law claims is granted; and it is further

ORDERED, defendants motion dismissing plaintiff's claims against the NYPD is granted.

This constitutes the Decision and Order of the Court.

12/22/2025

DATE

ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: