Showon v City of New York
2020 NY Slip Op 32399(U)
July 21, 2020
Supreme Court, New York County
Docket Number: 156551/2016
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE **PART** **62**

Justice

---X

FAZLE SHOWON

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

---X

INDEX NO. 156551/2016

MOTION DATE 01/10/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents,

Defendant moves for summary judgment, CPLR 3212, dismissing plaintiff's claims of false arrest, false imprisonment, malicious prosecution, and battery. Plaintiff was a yellow taxi-cab driver who allegedly ran over the foot of one of his passengers.

On June 13, 2015, around 3:00 p.m, plaintiff was working as a yellow cab taxi driver. Plaintiff picked up a group of four people at 350 West 34th Street, New York, NY 10001. Plaintiff dropped off the group at 610 West 34th Street, New York, NY 10001. As the family was getting out of plaintiff's taxicab, one of the passengers appeared to suffer an injury. On June 16, 2015, the complaining victim went to the tenth precinct and notified an officer that a taxicab with license number 2D17 ran over her right foot as she was getting out of the taxi.

Police Officer Johnston began an investigation complete with requests for TLC documents, searches of databases, canvass for video, and an interview of the complaining victim. Per Officer Johnston's deposition, "there was a canvas for video surveillance footage, there was multiple computer checks with DMV and some of our other systems, which is the Domain

Awareness System. There was interviews with the victim, there was conferrals with the Manhattan District Attorney's office and computer checks and then an arrest was made."

On August 27, 2015, Officer Johnston spoke with plaintiff over the phone and requested him to appear at NYPD's tenth precinct, which plaintiff did that same day. At the precinct, Officer Johnston placed plaintiff under arrest for a violation of Vehicle and Traffic Law § 600.02(a). Plaintiffs deposition states, "put handcuffs on me and then took me to a holding cell." The handcuffs were behind plaintiff, Officer Johnston read plaintiff his Miranda Rights, plaintiff was patted down and frisked along with his fingerprints taken. Plaintiff was brought upstairs in the precinct to a holding cell where he was the only person. Detective Johnston performed a background check on plaintiff and plaintiff was released two hours later with a summons.

The plaintiff was released with a desk appearance ticket and was thereafter prosecuted for leaving the scene of a motor vehicle accident without reporting personal injury. On February 3, 2016, the complaining victim signed a supporting deposition pursuant Criminal Procedure Law § 100.25. A Certificate of Disposition from the Criminal Court of the City of New York states that VTL 600(2)(a), and VTL 600(2)(c) were dismissed and sealed on March 8, 2016.

Plaintiff now brings this action for false arrest, false imprisonment, malicious prosecution, and battery.

Plaintiff appeared for an examination pursuant to General Municipal Law § 50-h on July 18, 2016. Plaintiff filed his complaint on August 5, 2016. The City of New York joined issue by service of its answer and demands on August 29, 2016. Defendant now moves for summary judgment, dismissing the complaint.

CPLR § 3212 (b) states that, "the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to

warrant the court as a matter of law in directing judgment in favor of any party." "To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented." (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]).

"The proponent of a motion for summary judgment carries the initial burden of presenting sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact." (see *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The existence of probable cause rebuts a claim of false arrest, false imprisonment, and malicious prosecution under both New York State law and federal law under 42 USC § 1983. There can be no federal civil rights claim for false arrest where the arresting officer had probable cause (see *Broughton v State*, 37 NY2d 451 [1975]).

To set out a cause of action for false arrest and/or imprisonment, a plaintiff must show that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to it, and the confinement was not otherwise privileged (see *Roberts v City of New York*, 171 Ad3d 139, 145-146 [1st Dept 2019]). If probable cause for the arrest existed at the time of the arrest, the confinement is privileged (see *Martinez v Muentes*, 340 Fed Appx 700, 701 [2d Cir 2009]; *Jocks v Tavernier*, 316 F.3d 128, 135 [2d Cir 2003]).

It is well-established that in determining probable cause to arrest, police officers may rely on statements provided to them by individuals who accuse another of having committed a crime (see *Medina v City of New York*, 102 Ad3d 101, 103 [1st Dept 2012]). Here, the complaining victim voluntarily provided a statement to the New York Police Department on June 16, 2015, that she had been injured by a taxicab on June 13, 2015 and the Officer conducted a related investigation. The complaining victim also signed a criminal court supporting deposition and verified under penalty of perjury that the statements in the criminal court affidavit were true.

In determining whether probable cause existed at the time of the arrest is not the accused's "underlying guilt or innocence" but rather is "the reasonableness of defendant's conclusion that probable caused existed for [his] arrest to face further proceedings to adjudicate his guilt or innocence" (see *Lewis v Caputo*, 95 AD3d 262, 278 [1st Dept 2012]).

On summary judgment, "facts must be viewed in the light most favorable to the non-moving party." (see *Vega v Restani Constr Corp*, 18 NY3d 499, 503 [2012]). "Once the proponent has met its burden, the opponent must now produce competent evidence in admissible form to establish the existence of a triable issue of fact." (see *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

To rebut the presumption that the complaining victim's statements are reliable plaintiff must demonstrate both that the statements were not reliable and that Officer Johnston knew or should have known that they were not reliable. Courts require that to overcome the presumption of a statement's reliability, a party must come forward with "materially impeaching circumstances" (see *Medina v City of New York*, 102 AD3d 101, 104 [1st Dept 2012]). In clarifying what constitutes "materially impeaching circumstances," the First Department has stated that a "mere denial by the accused of the complainant's claims" is insufficient (*id.* at 105).

Plaintiff's reply states, "[i]t is respectfully submitted that a question of fact exists as to whether defendant had probable cause to arrest plaintiff in that plaintiff was never notified that he had 'run over' a passenger's foot, and that his leaving an area after passengers paid and exited his vehicle is just normal business behavior for a taxi driver."

Plaintiff submits an affidavit which does not mention notice of running over a passenger's foot. Plaintiff affirms, "I was first arrested on August 27, 2015, when I was asked to

come to the 10th Precinct. I was arrested for leaving the scene of an accident which occurred on June 15, 2015 and released."

A cause of action to recover damages for false arrest and false imprisonment does not lie if the defendant can establish the existence of probable cause for the plaintiff's arrest (see *Kracht v Town of Newburgh*, 245 Ad2d 424 [2d Dept 1997]).

If a police officer has probable cause to arrest an individual, it follows that the ensuing prosecution is supported by probable cause (see *Broughton*, 37 NY2d at 456; *Feinberg v Saks & Co.*, 83 AD2d 952 [2d Dept 1981]). The existence of probable cause at the time of prosecution is initiated is fatal to any claim of malicious prosecution (see *Colon v City of New York*, 60 NY2d 78, 82 [1983]). Here it is clear, even if looking at facts most favorable to the plaintiff, that probable cause existed.

Where a cause of action for battery is predicated on action taken to effect a lawful arrest, such as handcuffing an arrestee, the cause of action must be dismissed as privileged contact between an officer and the arrestee (see *Mendez v City of New York*, 137 AD3d 468, 477-478 [1st Dept 2016]).

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

7/21/2020
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	[X] CASE DISPOSED		[ ] NON-FINAL DISPOSITION		
	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE	