



PN-NY-002-011

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NICOLE SARNICOLA,

PLAINTIFF

vs

THE COUNTY OF WESTCHESTER, etc.,
et al.,

DEFENDANTS

01 Civ 6078 (CM) (MDF)
DECLARATION AND
AFFIRMATION OF
JAMES I. MEYERSON

James I. Meyerson, being duly admitted to practice law in and before the Courts of the State of New York among others and being duly admitted to practice law in and before this Court among others and being duly aware of the penalties for perjury and being duly aware of the sanctions which this Court may impose for the violation of its Rules, affirms under penalty of law and declares under the threat of the imposition of sanction by this Court for the violation of its Rules as follows:

1. I am the attorney for the Plaintiff.
2. I have prepared the Plaintiff's papers in Opposition to the Defendant' Motion for Summary Judgment. I have also prepared the Plaintiff' papers in support of a Cross Motion for Summary Judgment.
3. I believe, in good faith, that the Defendants are not entitled to summary judgment. On the other hand and based on a significant number of undisputed relevant material facts, I believe that the Plaintiff is entitled to judgment as a matter of law on the various claims which she has asserted in this litigation.
4. There are some fact disputes. Such disputes relate to a narrow universe of information which Defendant McGurn claims that he was aware of at the time that he directed the Plaintiff's arrest. To the extent that such information changes the equation for assessing the probable cause [and I do not believe that, even with that information, such would change the outcome in Plaintiff's favor], then, it is submitted, the matter must be submitted to a jury for a resolution of those fact disputes.
5. On the basic facts which are not disputed and placing aside the limited facts which are disputed [relative to information

which Defendant McGurn asserts he had at the time he directed the Plaintiff's arrest], Defendant McGurn has testified that he believed that he had sufficient probable cause to arrest the Plaintiff and he would have arrested her. On that information which is not disputed, Plaintiff submits that, as a matter of law, Defendant McGurn did not have a probable cause basis to arrest her. Accordingly, on that information, judgment should be entered as a matter of law for the Plaintiff [on her false arrest claim].

6. Moreover in that regard, the Plaintiff believes that the disputed information should be discounted and disregarded, as a matter of law, since it is not documented in any of the contemporaneous 4/26/01 field reports; and, therefore, as a matter of law, it cannot now be advanced to bolster the information base which was available to McGurn at the time that he subjected the Plaintiff to an arrest.

7. Furthermore and based on the uncontested material facts and assuming that those facts are the only facts which are relevant to the probable cause inquiry given that on those undisputed material facts Defendant McGurn has admitted that he would have arrested the Plaintiff without the disputed information being factored in, I believe that there was no probable cause for the Plaintiff's arrest and I further believe that no reasonable police officer could have believed that there was probable cause to arrest the Plaintiff.

8. As a matter of fact, based on the testimony of undercover Officer Kelly, the reason for the arrest was and is apparent: [a] to take everyone into custody no whatever what the evidence of criminal activity against a specific individual [if any]; [b] to interrogate everyone taken into custody [before booking and charging anyone]; and [c], then, to sort it all out once everyone was in custody. Such is an impermissible justification for an arrest because the "suspicion" for a "Terry stop" interrogation does not metastasize into probable cause for a full scale custodial arrest and custodial interrogation associated therewith simply because of a generic proximity to individuals for whom there was probable cause to arrest for particular and specific criminal activity.

9. It is my belief, too, that the strip search to which the Plaintiff was subjected by Defendant McGurn pursuant to the County policy, was, as a matter of law, unconstitutional because: [a] there was no probable cause for the arrest]; and/or [b] because, even assuming probable cause for the arrest, there was no independent basis to believe that the Plaintiff was secreting a weapon or contraband or was otherwise a security risk because of something which she was hiding; and/or [c] because the policy, nonetheless, allowed her to be subjected to the strip search simply because she was arrested in the context of a drug related situation to which she had some proximity and without more.

10. As with the arrest and except for the limited fact disputes related to the arrest which may be irrelevant to the analysis, there are no material fact disputes about the strip search and the circumstances thereof; and, accordingly, it appears that judgment, as a matter of law, is the appropriate vehicle for resolving the legality of the search. On the other hand and to the extent that probable cause is a critical aspect to the resolution of the case and the disputed facts are deemed to be relevant [even in the context of Defendant McGurn indicating that without them he still would have arrested the Plaintiff and subjected her to the strip search], then the strip search issue may best be left to resolution after trial.

11. Finally, with respect to the Plaintiff's excessive detention claim, it appears that there are no relevant material fact disputes. Defendant McGurn, who was the individual responsible for her release, indicated that he did not authorize the Plaintiff's release for approximately two hours after she completed her statement at 8:45 P.M. [the Plaintiff believes that it is closer to three hours thereby proposing that there is a dispute about the period post statement detention before she was authorized for release]. On the undisputed relevant and material facts, the Plaintiff believes that, assuming probable cause for her arrest, nonetheless, she should have been permitted to leave at 8:45 P.M. when she gave her statement. She was not charged at the time of the completion of her statement; and she was not released at that time; and she was not booked or charged. Accordingly and as a matter of law, the continued detention of the Plaintiff was unlawful and unconstitutional and the Court, on the undisputed relevant material facts as described, should so hold.

12. I have attached hereto as part of my submission, materials relevant to the claims which represent evidence supporting the uncontested relevant material facts and otherwise endeavoring to discount, as irrelevant, the facts which are in dispute. If the latter cannot be achieved, then judgment in favor of either party with respect to some of the Plaintiff's claims may be required to be postponed pending a resolution of those contested facts [if deemed relevant to the probable cause equation].

DATED: New York, New York
February 17, 2002

Respectfully submitted,



JAMES I. MEYERSON