

# State of New York Court of Appeals

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## MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 113 SSM 21

Wayne Roberts,  
Appellant,

v.

City of New York, et al.,  
Respondents.

Submitted by Brian J. Shoot, for appellant.  
Submitted by MacKenzie Fillow, for respondents.

### MEMORANDUM:

The order of the Appellate Division should be affirmed, with costs. Plaintiff failed to raise any material, triable issue of fact with respect to whether probable cause for his arrest

and prosecution was lacking, or as to whether the police acted with actual malice (see generally De Lourdes Torres v Jones, 26 NY3d 742 [2016]).

Roberts v City of New York

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RIVERA, J. (dissenting):

“It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (Vega v Restani Constr. Corp, 18 NY3d 499, 505

[2012])). The courts below failed to apply this well-established standard to defendant's motion and the majority repeats the error by summarily concluding that no issue of fact is raised here, even though plaintiff's claims turn on contested versions of the events leading to his arrest and prosecution, and the credibility of interested witnesses. Thus, defendants are not entitled to summary judgment and the Appellate Division should be reversed. I dissent.

A jury acquitted plaintiff Wayne Roberts of murder in the second degree and related charges. He then sued the City of New York, the City Police Department and various police officers for, amongst other claims, false arrest and malicious prosecution. In his complaint, plaintiff asserted that he was wrongfully accused and imprisoned for two and half years, and maliciously prosecuted despite the lack of probable cause to arrest and legal justification to pursue his criminal prosecution. He claimed defendants acted with malice and in bad faith, in deliberate indifference to his rights.

Defendants moved for summary judgment and plaintiff opposed the motion, arguing there are triable issues of fact. Plaintiff is correct.

"A plaintiff asserting a common-law claim for false imprisonment must establish that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to the confinement, and that the confinement was not otherwise privileged" (Martinez v City of Schenectady, 97 NY2d 78, 85 [2001]). To make out a claim of malicious prosecution, the plaintiff must show "(1) the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, (2) the

termination of the proceeding in favor of the accused, (3) the absence of probable cause for the criminal proceeding and (4) actual malice” (Broughton v State of New York, 37 NY2d 451, 457 [1975]). Actual malice exists where “the defendant . . . commenced the prior criminal proceeding due to a wrong or improper motive, something other than a desire to see the ends of justice served” (Nardelli v Stamberg, 44 NY2d 500, 503 [1978]).

On a motion for summary judgment, “the defendant . . . must establish a defense to the plaintiff’s malicious prosecution and false arrest claims as a matter of law by submitting sufficient evidence to eliminate any material issues of fact” (De Lourdes Torres v Jones, 26 NY3d 742, 762-763 [2016]). The court is required to view the facts “in the light most favorable to the plaintiff” and to draw “every available inference . . . in the plaintiff’s favor”; as relevant here, “even if the jury at a trial could, or likely would, decline to draw inferences favorable to the plaintiff on issues of probable cause and malice, the court on a summary judgment motion must indulge all available inferences of the absence of probable cause and the existence of malice” (*id.* at 763).

Defendants submitted and relied on police testimony to support the argument that police had probable cause to arrest plaintiff and that his prosecution was justified, including testimony by the investigating officer who arrested plaintiff, Detective Ramirez. However, as discussed by the thorough and well-reasoned Appellate Division dissent below, the various witnesses gave deposition testimony that conflicted with police accounts of events and that, if believed by a jury, could have supported a verdict in plaintiff’s favor on both causes of action. For example, C.W., one of the witnesses who identified plaintiff as the

shooter, testified that police left C.W. alone with C.W.'s then-romantic partner, H.A., who coached C.W. on a false story to tell police so that they would be lenient in H.A.'s unrelated case; moreover, H.A. was in the very room when C.W. gave a statement to police. All of these factual assertions contradicted police descriptions of events. The Appellate Division majority was incorrect to decide "that, as a matter of law, the police could not be faulted for believing [C.W.]'s statement" under the circumstances, because as the dissent explained, "[i]t is impossible to reach such a conclusion without crediting Detective Ramirez and discrediting [C.W.]" (Roberts v City of New York, 171 AD3d 139, 157 n 5 [1st Dept 2019] [Gesmer, J., dissenting]). Indeed, the majority below heavily emphasized that C.W. and H.A. gave statements that were "consistent in all material respects," notwithstanding that C.W.'s testimony, if believed, seriously undermined the corroborating value of such consistency (id. at 149 [majority op]).

Particularly striking is the following statement in the majority opinion below about A.M., an eyewitness to the shooting: "[A.M.] testified, *contrary to [A.M.'s] statement to police*, that [A.M.] had unequivocally informed Detective Ramirez during [A.M.'s] interview that . . . plaintiff was not the shooter" (id. at 151 [emphasis added]). Apparently, the majority assumed the truth of defendants' account of what A.M. told the police before even considering A.M.'s testimony. Further, the majority refers to A.M.'s testimony as a "belated attempted exculpation of plaintiff," notwithstanding that A.M.'s testimony supports a finding that A.M. told police at the very outset of the case that plaintiff "was not

the shooter” (id.). It is perfectly clear that the majority opinion below improperly resolved the issue of A.M.’s credibility decisively in favor of the defendant and against the appellant.


Where, as here, conflicting evidence creates one or more material issues of fact, those issues “must be resolved by the jury rather than by the court as a matter of law” (De Lourdes Torres, 26 NY3d at 771). The decision in this Court and the majority decision below both defy this basic principle.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge DiFiore and Judges Stein, Fahey, Garcia and Feinman concur. Judge Rivera dissents in an opinion in which Judge Wilson concurs.

Decided October 29, 2019

Wayne Roberts  
01-06-20

State of Texas  
County of Tarrant  
Subscribed and sworn to (or affirmed) before  
me this 6 day of January, 2020  
  
Notary Public

