No. 16 CV 0553 (AKH)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT A. SCHRAMM, ET AL.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ET AL.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56 OF FEDERAL RULES OF CIVIL PROCEDURE

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PRELIMINARY STATEMENT

Plaintiffs Robert Schramm ("Schramm") and Gabriela Saenz ("Saenz") bring this action pursuant to 42 U.S.C. § 1983, arising from their arrests on June 7, 2015, after they were stopped at a sobriety checkpoint in upper Manhattan. Schramm, who was driving and admits to having consumed alcohol earlier that evening, initially refused to get out of the car when ordered to do so by officers and refused to submit to a portable breath test. During the course of the incident, although she was not asked to, Saenz got out of the car and refused to obey repeated orders for her to move away from the vicinity of where officers were interacting with Schramm, even though she was advised that she would be arrested if she failed to comply. Schramm was arrested for driving under the influence of alcohol and Saenz for obstructing governmental administration.

Plaintiffs now bring this action against defendants City of New York, Sergeant Noel Jugraj, and Police Officer Emmanuel Delacruz for unlawful stop, false arrest, denial of procedural due process and municipal liability.[1] Because: (1) there was probable cause to arrest both plaintiffs, (2) plaintiffs' detentions of less than twenty-four hours were presumptively reasonable, (3) plaintiffs' stop at the sobriety checkpoint was reasonable, (4) plaintiffs' due process claim fails as a matter of law, and (5) plaintiffs cannot establish an underlying constitutional violation and/or have not articulated a municipal policy or practice that allegedly caused a constitutional deprivation, summary judgment should be granted. This matter should also be dismissed because, at a minimum, the defendant officers are entitled to qualified immunity.

[1] Plaintiff's Amended Complaint contains claims against Police Officer Alan Hassel and a claim for malicious prosecution. Plaintiffs voluntarily dismissed such claims, with prejudice, on August 1, 2019 (Docket Entry No. 61).

STATEMENT OF RELEVANT FACTS[2]

At approximately 1:30 a.m. on June 7, 2015, Schramm was driving his car in the vicinity of Riverside Drive and 158th Street. (Deft. 56.1 ¶ 1). Saenz, Schramm's wife, and their friend, James Farrell, were passengers in the car. (Deft. 56.1 ¶ 1). The trio was returning to Farrell's apartment after an evening of socializing with friends in various bars and restaurants in the Greenwich Village neighborhood of Manhattan. (Deft. 56.1 ¶¶ 2-3). Upon arriving at a vehicle checkpoint, Schramm's car was stopped by an officer who asked Schramm whether he had been drinking, to which Schramm replied no. (Deft. 56.1 ¶¶ 5, 10). Schramm, however, had in fact, been drinking alcohol prior to the time that he was stopped. (Deft. 56.1 ¶ 4).

The checkpoint had been set up pursuant to NYPD enforcement initiative to combat drunk driving. (Deft. 56.1 ¶¶ 6-7). After pulling further into the checkpoint, Schramm was directed to pull over to the right side of the street. (Deft. 56.1 ¶ 11). Officer Delacruz walked to the car and spoke to Schramm. (Deft. 56.1 ¶ 12). During this conversation, Officer Delacruz observed that Schramm had bloodshot eyes and that he smelled of alcohol. (Deft. 56.1 ¶ 13). Accordingly, Officer Delacruz told Schramm to step out of the car to take a portable breath test. (Deft. 56.1 ¶ 14). In response, Schramm asked Officer Delacruz whether he was required to take a portable breath test. (Deft. 56.1 ¶ 15). Thereafter, instead of getting out of the car, Schramm rolled up his window and turned his head away from the driver's side window, where Officer Delacruz was speaking to him. (Deft. 56.1 ¶ 16).

[2] The material facts set forth in the NYC Defendants' Statement Pursuant to Local Civil Rule 56.1 ("D56.1") are adopted only for purposes of this motion for Summary Judgment. *See* Local Civil Rule 56.1(c) (facts are admitted only "for the purposes of the motion"). Defendants reserve the right to assert different and/or conflicting facts at trial. *See Vasconcellos v. City of N.Y.*, 12-CV-8445 (CM)(HBP), 2015 U.S. Dist. LEXIS 121572, at *4 (S.D.N.Y. Sept. 9, 2015) (Local Civil Rule 56.1 "means a party can 'admit' facts that it intends to dispute at trial without suffering any prejudice – the 'admission' . . . neither binds the party going forward if the motion is denied nor can it be admitted in evidence at trial.").

Schramm eventually got out of the car. (Deft. 56.1 ¶ 18). After he got out of the car, he repeatedly asked Officer Delacruz whether he was required to take the portable breath test, and stated that he would prefer not to take it. (Deft. 56.1 ¶ 19). Officer Delacruz asked plaintiff if he was refusing to take the portable breath test and plaintiff stated that it "was not his wish to take the breath test" and, indeed, he did not take the test. (Deft. 56.1 ¶¶ 20-21). Schramm was handcuffed and placed under arrest. (Deft. 56.1 ¶ 24). The arrest charges were driving while intoxicated and driving while ability impaired. *Id.* Schramm was also issued a traffic summons, charging him with failure to submit a portable breath test. (Deft. 56.1 ¶ 22).

While the interaction between Schramm and Officer Delacruz was occurring, Saenz and Farrell got out of the car and stood close enough to where the two were speaking that Saenz and Farrell could hear their conversation. (Deft. 56.1 ¶¶ 25-26). Saenz and Farrell were told to step back from the area of the pending investigation involving Schramm. (Deft. 56.1 ¶ 27). Saenz refused to step back. (Deft. 56.1 ¶ 28). Officer Delacruz then told Saenz that if she did not step back, she would be arrested for obstruction of governmental administration. (Deft. 56.1 ¶ 29). She continued to refuse to step back and was placed under arrest by Sergeant Jugraj. (Deft. 56.1 ¶¶ 30-31).

Schramm was transported to the 28th Precinct. (Deft. 56.1 ¶ 32). While there, the Intoxicated Driver Testing Unit ("I.D.T.U.") administered sobriety tests to Schramm at 4:41 a.m., over three hours after his car was originally stopped. (Deft. 56.1 ¶¶ 33-34). The chemical testing revealed that Schramm had a blood alcohol concentration of .034. (Deft. 56.1 ¶ 34). Officer Delacruz forwarded the arrest paperwork pertaining to Schramm to the New York County District Attorney's Office ("DANY") at approximately 7:20 a.m. on June 7, 2015. (Deft. 56.1 ¶ 35). DANY declined to prosecute Schramm. (Deft. 56.1 ¶ 36). Schramm was released

from the New York County Criminal Court approximately 20 hours and 45 minutes after he was taken into custody. (Deft. 56.1 ¶ 37).

As to Saenz, she was arrested and charged with obstruction of governmental administration. (Deft. 56.1 ¶ 31). She was held for approximately 17 hours until she was arraigned. (Deft. 56.1 ¶ 38). Post-arraignment, she accepted an adjournment in contemplation of dismissal *in absentia* and the charges against her were dismissed on January 14, 2016. (Deft. 56.1 ¶ 38).

STANDARD OF REVIEW

Summary judgment "should be rendered if the pleadings, the discovery, and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "A fact is material if it might affect the outcome of the suit under the governing law,' meaning that 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Higginbotham v. Sylvester*, No. 14-cv-8549 (PKC), 2016 U.S. Dist. LEXIS 151997, at *5-6 (S.D.N.Y. Nov. 2, 2016), *aff'd*, 741 Fed. Appx. 28, 31 (2d Cir. 2018) (Summary Order) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "A court considering a motion for summary judgment must construe the evidence in the light most favorable to the non-moving party, and draw all ***reasonable*** inferences in its favor." *Excelled Sheepskin & Leather Coat Corp. v. Or. Brewing Co.*, 897 F.3d 413, 415 (2d Cir. 2018) (citation and internal quotes omitted) (emphasis added). In order to demonstrate a "genuine issue of material fact" that requires a trial, *Allen v. Coughlin*, 64 F.3d 77, 79 (2d Cir. 1995), the non-moving party "may not rely on conclusory allegations or unsubstantiated speculations," *Jeffreys v. Rossi*, 275 F. Supp. 2d 463, 473-74 (S.D.N.Y. 2003), *aff'd*, 426 F.3d 549 (2d Cir. 2005) (citations and internal quotations

omitted). Additionally, on a motion for summary judgment, a moving party may "support the assertion" "that a fact cannot be disputed" by, *inter alia*, "showing . . . that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B).

ARGUMENT

POINT I

PLAINTIFFS' CLAIMS FOR FALSE ARREST SHOULD BE DISMISSED BECAUSE THERE WAS PROBABLE CAUSE FOR THEIR ARRESTS; ALTERNATIVELY, DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY.

A. Legal standard for false arrest.

It is well settled that "[t]he existence of probable cause to arrest constitutes justification and is a complete defense to an action for false arrest." *Weyant v. Okst*, 101 F.3d 845, 852 (2d Cir. 1996). Probable cause will be present when an officer has knowledge of, or reasonably trustworthy information as to, facts and circumstances sufficient to reasonably believe that an individual, has or is going to commit a crime. *Bernshtein v. City of New York*, 496 Fed. Appx. 140, 142 (2d Cir. 2012). This inquiry is rooted in "whether the facts known by the arresting officer at the time objectively provided probable cause to arrest." *Codrington v. City of New York*, No. 12-CV- 01650 (SLT)(SMG), 2015 U.S. Dist. LEXIS 24905, at *12 (E.D.N.Y. Feb. 27, 2015) (quoting *Jaegly v. Couch*, 439 F.3d 149, 153 (2d Cir. 2006)). As a legal standard, probable cause is a "fluid concept" that does not require "absolute certainty." *United States v. Clark*, 638 F.3d 89, 94 (2d Cir. 2011) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)). Only a ***probability*** of criminal activity or that criminal activity will be found is required to establish the existence of probable cause. *Gates*, 462 U.S. at 244. Moreover, the validity of an arrest does not

depend upon an ultimate finding of guilt or innocence. *Pierson v. Ray*, 386 U.S. 547, 555 (1967).

Further, "[i]n determining whether there was probable cause for [an] arrest, the Court's analysis is not limited to the offense invoked by the arresting officer or the crimes that are ultimately charged . . .." *Jaegly v. Couch*, 439 F.3d 149, 153-54 (2d Cir. 2006) (quoting *Devenpeck v. Alford*, 543 U.S. 146, 152-53 (2004)). The Court's concern is with the "validity of the arrest, and not [] the validity of each charge." *Id.* at 154. In this regard, "[t]he existence of probable cause to arrest—even for a crime other than the one identified by the arresting officer—will defeat a claim of false arrest under the Fourth Amendment." *Figueroa v. Mazza*, 825 F.3d 89, 99 (2d Cir. 2016) (citing *Devenpeck*, 543 U.S. at 152-54). It is also well-settled that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001).

B. Probable cause existed to arrest plaintiff Schramm for driving while impaired and for refusing to take a portable breath test at the scene.

Schramm was arrested, and/or received a summons, for: (1) Driving while ability impaired pursuant to V.T.L. § 1192(1), which states, "[n]o person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol," (2) Driving while intoxicated pursuant to V.T.L. § 1192(2), and (3) violating V.T.L. § 1194(1)(b), which states, in relevant part, that "[e]very person operating a motor vehicle … in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to a breath test to be administered by the police officer." While there was probable cause to arrest Schramm for all three offenses, defendants need only show that there was probable cause to arrest Schramm for one of the offenses. *Figueroa, supra.*

1. There was probable cause to arrest Schramm for Driving While Ability Impaired.

There was, at a minimum, probable cause to arrest plaintiff for Driving While Ability Impaired pursuant to V.T.L. § 1192(1), which authorizes the arrest of any person who has impaired, to any extent, his or her ability to operate a motor vehicle as a reasonable and prudent driver through the consumption of alcohol. In the context of an arrest for driving while impaired, the probable cause test will be met where an objectively reasonable officer believes that a plaintiff was driving while his ability to do so was impaired by the consumption of alcohol. *Hoyos v. City of New York*, 999 F. Supp. 375, 387 (E.D.N.Y. 2013); *see also People v. Reding*, 167 A.D.2d 716, 717 (3d Dep't 1990) (indicating that the degree of proof necessary to support an arrest for driving while impaired is "far less rigorous" than that required for driving while intoxicated). Here, Officer Delacruz's observations of plaintiff provided him with probable cause to arrest Schramm for driving while impaired. Specifically, plaintiff had bloodshot eyes, he smelled like alcohol, and was acting in an evasive manner, including, rolling up his window when he was asked to exit his car to take a breath test, initially refusing to get out of the car when requested, and refusing to take the portable breath test a number of times. Based on plaintiff's physical appearance and behavior, it was reasonable for Officer Delacruz to believe that plaintiff had been driving while impaired by alcohol and, accordingly, there was probable cause for Schramm's arrest.

2. There was probable cause to arrest Schramm for failure to submit to a portable breath test.

There was also probable cause to believe that Schramm was in violation of V.T.L. § 1194(1)(b), which states, in relevant part, that "[e]very person operating a motor vehicle … in violation of any of the provisions of this chapter shall, at the request of a police officer, submit to

a breath test to be administered by the police officer." As set forth in Point I.B.1. above, at the very least, there was probable cause to believe that Schramm was driving while impaired by alcohol and accordingly, there was probable cause to summons, or arrest, Schramm for his undisputed refusal to submit to the PBT. *See*, *People v. Leontiev*, 38 Misc. 3d 716, 719-723 (Nassau Cty. 1st Dist. 2012) (finding that plaintiff's failure to submit to a portable breath test was a ticketable offense); *People v. Graziano*, N.Y.S.2d 905, 905 (App. Term 2d J.D. 2008), *lv. denied*, 10 N.Y.3d 934 (2000) (finding that "submission to a 'field' breath test is, under some circumstances, mandatory"); *People v. Cunningham*, 95 N.Y.2d 909 (2000) (affirming defendant's conviction under V.T.L. § 1194(1)(b)).

C. Probable cause existed to arrest Saenz for Obstruction of Government Administration.

Saenz's false arrest claim should be dismissed because there was probable cause to arrest her for obstruction of government administration. "A person is guilty of [OGA] when he intentionally prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference . . . ." N.Y. Penal Law § 195.05. Further, "'[a]n officer has probable cause to arrest for obstructing governmental administration where a person refuses to comply with an order from a police officer.'" *Marcavage v. City of New York*, No. 05-CV-4949 (RJS), 2010 U.S. Dist. LEXIS 107724, at **29-30 (S.D.N.Y. Sept. 29, 2010), *aff'd*, 689 F.3d 98, 110 (2d Cir. 2012) (quoting *Johnson v. City of New York*, No. 05-cv-7519, 2008 WL 4450270 (S.D.N.Y. Sept. 29, 2008), and citing *Lennon v. Miller*, 66 F.3d 416 (2d Cir. 1995)).

Probable cause to arrest for obstruction of governmental administration also may be found where, for example, an individual "refus[es] to obey orders to leave a premises, to exit a vehicle, to 'step back' from an accident scene or to keep away from an area where a disturbance is taking

place." *Wilder v. Vill. of Amityville*, 288 F. Supp. 2d 341, 344 (E.D.N.Y. 2003) (finding probable cause to arrest plaintiff for OGA where she ignored three orders to move away from an area in which a tree was being removed), *aff'd*, No. 04-0236-cv, 2004 U.S. App. LEXIS 22148, at *1 (2d Cir. Oct. 25, 2004); *see also Lennon v. Miller*, 66 F.3d 416, 424 (2d Cir. 1995) (finding probable cause for arrest where plaintiff refused to follow officer's order to exit her vehicle).

It is undisputed that Sergeant Jugraj repeatedly ordered Saenz to move away from the vicinity of where officers were questioning Schramm. By Saenz's own admission, she refused to move even after Sergeant Jugraj warned her that she would be arrested if she failed to do so, and she continued to interject as Schramm was being handcuffed.[3] (Deft. 56.1 ¶ 29). Saenz's behavior must also be examined in the context of the escalating circumstances facing Delacruz and Jugraj, particularly that Schramm smelled of alcohol, initially refused to get out of his car or to take a portable breath test, rolled up his car window as the officer was engaging him, and continued to refuse to take the breath test even after he eventually exited his car. Given the emerging situation with Schramm, there was probable cause to arrest Saenz for obstruction of governmental administration for her interference with the investigation into and/or questioning of, and arrest of Schramm – through her refusal to comply with Sergeant Jugraj's orders for her to move – and, accordingly, her false arrest claim should be dismissed. *See e.g. Marcavage*, *supra*; *Wilder*, *supra*.

[3] Farrell also confirmed that both he and Saenz were instructed to step back, that Officer Delacruz told Saenz that she would be arrested if she did not step back, and that Saenz refused to step back. (Deft. 56.1 ¶ 27).

D. Defendants are entitled to qualified immunity.

1. At minimum, there was arguable probable cause to arrest Schramm.

"Qualified immunity is a complete defense to false arrest claims." *Ackerson v. City of White Plains*, 702 F.3d 15, 21 (2d Cir. 2012). "The affirmative defense of qualified immunity sets a "high bar" for those seeking to challenge it, as the Supreme Court has firmly established that "qualified immunity 'gives ample room for mistaken judgments' and 'provides ample protection to all but the plainly incompetent or those who knowingly violate the law.'" *Brown v. City of New York*, No. 13-CV-1018 (KBF), 2016 U.S. Dist. LEXIS 53365, at *17 (S.D.N.Y. Apr. 20, 2016) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Further, "[t]he Supreme Court has made it clear that an officer's actions are not to be assessed with 20/20 hindsight." *Salim v. Proulx*, 93 F.3d 86, 91 (2d Cir. 1996).

In the context of a false arrest claim, an officer making an arrest without probable cause is entitled to qualified immunity "if he can establish that there was 'arguable probable cause' to arrest," defined by the Second Circuit as: "'if either (a) it was objectively reasonable for the officer to believe that probable cause existed, or (b) officers of reasonable competence could disagree on whether the probable cause test was met.'" *Escalera v. Lunn*, 361 F.3d 737, 743 (2d Cir. 2004). As discussed above, there was probable cause, or at least arguable probable cause, to believe that plaintiff Schramm was driving while intoxicated or impaired by alcohol, and to arrest him for failing to submit to the PBT. Officer Delacruz observed that Schramm smelled of alcohol and had bloodshot eyes. Further, upon learning that he was to take a portable breath test, Schramm rolled up the window and refused to get out of the car. Schramm also repeatedly declined to take a breath test after he finally exited his car. Additionally, Schramm still had a blood alcohol concentration of .034 over three hours after he

was first stopped. Based on these facts, it cannot be said that no reasonable officer would have arrested Schramm.

2. Additionally, it was not clearly established that Delacruz and Jugraj could not arrest Schramm for being impaired and/or refusing to take a breath test.

The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (citations omitted). Thus, even where a constitutional injury is shown, qualified immunity applies unless plaintiff can show that the right violated was "clearly established at the time of defendant's actions." *Zalaski v. City of Hartford*, 723 F.3d 382, 388 (2d Cir. 2013). A constitutional right cannot be said to be clearly established unless its contours are "beyond debate" such that "any reasonable official in the defendant's shoes would have understood that he was violating [such right]." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). "Even where the plaintiff's federal rights . . . are clearly established, the qualified immunity defense protects a government actor if it was objectively reasonable for him to believe that his actions were lawful at the time of the challenged act." *Lennon v. Miller*, 66 F.3d 416, 420 (2d Cir. 1995) (internal quotation marks omitted). Qualified immunity is applicable regardless of "whether a government actor's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact." *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009) (citations omitted).

First, defendants found no Supreme Court and/or Second Circuit cases holding that a law enforcement officer could not arrest a driver displaying indicia of alcohol consumption for driving while ability impaired and/or arrest/summons a driver who refused to take a breath test after being stopped at a sobriety checkpoint. Accordingly, Officer Delacruz and Sergeant

Jugraj are entitled to qualified immunity because it was not clearly established that an officer could not make an arrest and/or issue a citation in such an instance.

Second, even if Officer Delacruz and/or Sergeant Jugraj were mistaken in their assessment of the applicable law, it cannot be said their mistaken beliefs were not reasonable and/or that they were plainly incompetent.

3. There was, at a minimum, arguable probable cause for Saenz's arrest.

Further, there was arguable probable cause for Saenz's arrest and, accordingly, Officer Delacruz and Sergeant Jugraj are entitled to qualified immunity. There is no dispute that Saenz was repeatedly ordered to move away from the area where the officers were attempting to administer the portable breath test to Schramm and placing him under arrest. In fact, Saenz admits that she was warned that if she did not move from the area, she would be arrested. Saenz, also by her own account, refused to do so. Particularly in the context of the situation where officers were attempting to arrest Schramm, who had up to that point, refused to get out of the car and refused to take the portable breath test, it cannot be said that no reasonable officer would believe that there was probable cause to arrest Saenz. There was thus, at a minimum arguable probable cause to arrest Saenz for obstruction of governmental administration. *See, e.g.*, *Antic v. City of New York*, 740 Fed. Appx. 203, 206 (2018) (finding that where plaintiff had repeatedly been told to leave the area by police officers, his "failure to obey, even if short-lived provided [the officers] with arguable probable cause to arrest and prosecute [plaintiff] for OGA").

POINT II

ANY PURPORTED EXCESSIVE DETENTION CLAIM MUST BE DISMISSED BECAUSE BOTH PLAINTIFFS' DETENTIONS WERE LESS THAN 24 HOURS IN DURATION, RENDERING THEM PRESUMPTIVELY REASONABLE.

The Amended Complaint alleges that defendants "deliberately held both Plaintiffs in custody for unreasonably long periods of time for no lawful purpose." (Am. Comp. ¶ 44). Further, plaintiffs allege that defendants "deliberately, maliciously and illegally" held plaintiff Schramm in custody for 19 hours after the administration of the sobriety test by I.D.T.U. (Am. Comp. ¶ 46). As to Saenz, plaintiffs allege that defendants, "charged her with a minor offense that they knew would be dismissed…and held her for a total of 16 hours." *Id.* at ¶ 48. They also allege that, "[t]he charge issued against Plaintiff Saenz could have been issued as an appearance ticket but Defendants, deliberately, maliciously and illegally arrested her and held her against her will." *Id.* at ¶ 49. To the extent that these paragraphs constitute a properly pled claim for excessive pre-arraignment detention, the claim must be dismissed since the time spent in custody by each plaintiff was presumptively reasonable.

The Fourth Amendment requires a prompt judicial determination of probable cause after a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991); *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975). The Supreme Court has designated 48 hours as the "presumptive outside limit for confinement" prior to a probable cause determination, which occurs at arraignment in New York State. *McLaughlin*, 500 U.S. at 56; *Bryant v. City of New York*, 404 F.3d 128, 138 (2d Cir. 2005). Further, a plaintiff's claim for unreasonable detention under the Fourth Amendment is judged by the same objective reasonableness test for excessive force claims set forth in *Graham v. Connor*, 490 U.S. 386 (1989). *Bryant v. City of New York*,

404 F.3d 128 (2d Cir. 2005) (applying the *Graham* test to determine the reasonableness of pretrial detentions following warrantless arrests). "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham*, 490 U.S. at 397.

As an initial matter, both plaintiffs were held for considerably less than 48 hours prior to being released after their respective arrests – Schramm was released after approximately 20 hours and 45 minutes and Saenz was released after approximately 17 hours - meaning that the length of their detentions were presumptively reasonable. Further, there is nothing in the record evincing that defendants' actions were objectively unreasonable. As set forth *supra*, there was probable cause to believe that Schramm was driving while under the influence of alcohol, as well as, probable cause to arrest Saenz for obstruction of governmental administration. Thus, it was objectively reasonable to transport plaintiffs to the 28th Precinct and for officers to process plaintiffs' arrests, including forwarding the necessary documents to the prosecutor. Plaintiffs' assertions to the contrary are unavailing.

First, Saenz appears to allege that she was subjected to an excessive detention simply because, according to her, she could have been issued a desk appearance ticket rather than remaining in custody until arraignment. However, there is no cognizable claim arising from the failure of an officer to issue an arrestee a summons or a desk appearance ticket in lieu of taking her into custody pending arraignment in criminal court. *See, Caravalho v. City of New York*, No. 13-cv-4174 (PKC)(MHD), 2016 U.S. Dist. LEXIS 44280, at *43 (S.D.N.Y. Mar. 31, 2016) ("If plaintiffs could sustain their excessive detention claims simply by showing that defendants could have, but did not, release them with a summons, than every summons-eligible arrest for which a summons was not given would amount to an unreasonable detention. There is no law supporting

that assertion.").[4] Accordingly, the failure to issue Saenz cannot serve as the basis of an excessive detention claim.

Second, Schramm's allegation that he should have been released after the chemical test revealed that his blood alcohol content was .034, more than three hours after he had been placed in custody, is equally unavailing. As set forth *supra*, Schramm smelled of alcohol despite his denial, and he engaged in a number of evasive behaviors that indicated that he had been drinking alcohol. Moreover, the fact that his blood alcohol content was .034 more than three hours after he had been arrested was not necessarily dispositive of whether he was intoxicated and/or impaired at the time of his arrest. Accordingly, it was objectively reasonable for Officer Delacruz to forward the arrest documents regarding Schramm to DANY in order to allow the prosecutor to make a determination as to whether there was probable cause to prosecute Schramm. Thus, declining to release Schramm before the prosecutor could make a decision concerning the commencement of a criminal prosecution was not objectively unreasonable, and cannot serve as the basis of a viable excessive detention claim.

Third, to the extent that plaintiffs allege that they were detained in retaliation for their behavior, this claim also fails since, as indicated above, the standard for whether or not the length of a detention was reasonable is objective reasonableness and the motives of the officers are irrelevant. *Graham*, 490 U.S. at 39.

Finally, Officer Delacruz and Sergeant Jugraj are entitled to qualified immunity concerning any purported excessive detention claim since (1) it cannot be said that no reasonable officer would have detained Saenz versus issuing her a desk appearance and/or detained

[4] In fact, in *Caravalho*, similar to plaintiff Schramm, the New York County DA's office declined to prosecute all of the plaintiffs, and they were released from central booking without being arraigned.

Schramm after receiving the sobriety test results pending the decision of the prosecutor's office, and (2) at the time of the underlying incident, it was not clearly established that a law enforcement officer was required to issue a desk appearance ticket rather than detaining an arrestee pending arraignment and/or an officer was required to release an arrestee after the results of a sobriety test rather than await the prosecutor's decision where there were other indicia of intoxication/impairment.

POINT III

PLAINTIFFS' CLAIMS FOR UNLAWFUL STOP MUST BE DISMISSED BECAUSE THE SOBRIETY CHECKPOINT AT ISSUE IN THIS CASE WAS CONSTITUTIONAL.

It is well-established that law enforcement officers may set up vehicle checkpoints if the purpose is safety rather than any general law enforcement motives. "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing," *Dickerson v. Napolitano*, 604 F.3d 732, 750 (2d Cir. 2010) (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000)). However, "a warrantless suspicionless search [or seizure] may be justified 'when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable," *United States v. Amerson*, 483 F.3d 73, 80 (2d Cir. 2007) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987)). Specifically, the Supreme Court has approved of the use of suspicionless stops of vehicles at checkpoints for the purpose of detecting individuals who are driving while intoxicated. *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990).

In this case, it is not disputed that the primary purpose of the vehicle checkpoint was to identify drivers who may have been driving while intoxicated. (Deft. 56.1 ¶ 7). Further, as Schramm himself testified, he was asked questions related to his sobriety, not to other general

law enforcement purposes. (Deft. 56.1 ¶ 10). There is thus no evidence in the record evincing that the checkpoint's purpose was anything other than to enforce traffic laws related to sobriety, and accordingly, plaintiffs' unlawful stop claim should be dismissed accordingly.

POINT IV

PLAINTIFFS' CLAIMS FOR VIOLATION OF THEIR RIGHT TO PROCEDURAL DUE PROCESS MUST BE DISMISSED BECAUSE THEY FAIL AS A MATTER OF LAW.

It is difficult to discern what plaintiff's due process claim is. The complaint alleges that plaintiffs' "right to be free from deprivation of liberty without due process of law as required by the Fifth and Fourteenth Amendments" was violated (Am. Compl. ¶ 83), "the manner in which [they] were deprived of their liberty and kept from their liberty lacked any procedural safeguards whatsoever" (Am. Compl. ¶ 85), and "had no notice of the checkpoint and no meaningful opportunity to be heard regarding the deprivation of liberty." (Am. Comp. ¶ 86).

As an initial matter, there can be no due process claim under the Fifth Amendment because plaintiffs have not alleged any deprivation of his rights by the federal government. *See Ambrose v. City of New York*, 623 F. Supp. 2d 454, 466-467 (S.D.N.Y. 2009). Regarding any purported due process claim, to the extent that plaintiffs are alleging a substantive due process claim regarding an alleged deprivation of liberty based on their stop and/or arrest, the claim is more properly analyzed under the Fourth Amendment rather than the Fourteenth Amendment. *See e.g. Russo v. City of Bridgeport*, 479 F.3d 196, 208 (2d Cir. 2007) (an excessive detention claim is analyzed under the Fourth Amendment and not the more generalized notion of "substantive due process"). To the extent that plaintiffs purport to allege a procedural due process claim pursuant to the Fourteenth Amendment, it also fails since plaintiffs have no cognizable claim that they were denied procedural due process prior to the stop of their car at the

vehicle checkpoint, because the State is not required to provide pre-deprivation process. *Zinermon v. Burch*, 494 U.S. 113, 129 (1990) ("[N]o matter how significant the private interest at stake and the risk of erroneous deprivation, the State cannot be required constitutionally to do the impossible by providing pre-deprivation process."). Moreover, it is equally clear that plaintiffs received due process after their stop and arrest, in the form of arraignment or the decision of DANY not to prosecute Schramm. Accordingly, any purported due process claim should be dismissed.

POINT V

PLAINTIFFS' MONELL CLAIM MUST BE DISMISSED BECAUSE PLAINTIFFS HAVE FAILED TO DEMONSTRATE AN UNDERLYING CONSTITUTIONAL VIOLATION OR ARTICULATE A PATTERN OR PRACTICE OF DEFENDANT CITY.

To state a claim for municipal liability, a plaintiff must plausibly allege one of four different types of violations: (1) the existence of a formal policy, officially promulgated or adopted by a municipality, *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); (2) the official responsible for establishing a policy, with respect to the subject matter in question to the specific action, caused the alleged violation of plaintiff's rights, *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-484 (1986) (plurality opinion); (3) the existence of an unlawful practice by proof that this practice was so manifest as to imply the acquiescence of policy-making officials, *City of St. Louis v. Praprotnik*, 485 U.S. 112 127-30 (1985) (plurality opinion), *Sorlucco v. New York City Police Dep't*, 971 F.2d 864, 871 (2d Cir. 1992); or (4) a failure to train or supervise that amounts to "deliberate indifference" to the rights of those with whom the municipality's employees interact, *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); *Jenkins v. City of New York*, 478 F.3d 76, 94 (2d Cir. 2007).

Based on plaintiffs' Amended Complaint, it appears that plaintiffs are, without any particularity, alleging several of the above theories of municipal liability under *Monell*. Namely, plaintiffs allege that the City of New York caused plaintiffs' alleged unlawful stop through the following theories: (1) "the failure to adequately supervise and train officers"; (2) "the failure to properly monitor and discipline officers"; (3) "failure to adequately investigate citizen complaints of police misconduct"; (4) "directing policies allowing checkpoints without ensuring such checkpoints follow constitutional requirements"; and (5) "develop[ing], implement[ing], enforce[ing], encourage[ing], and sanction[ing] policies, practices and/or customs of conducting unlawful seizures, searches and arrests without reasonable suspicion or probable cause." (Am. Comp. ¶¶ 91-92). Read broadly, it thus appears that plaintiffs are alleging theories under subpoints (1), (3), and (4) above. That is, plaintiffs allege the City of New York has adopted formal policies that are unconstitutional with respect to the issue of sobriety checkpoints, the City has an unlawful practice that is so widespread as to imply the acquiescence of policy-makers, and that the City fails to adequately train, supervise, or discipline its employees with respect to setting up and administering constitutionally adequate sobriety checkpoints. There is, however, no evidence in the record to satisfy any of those theories.

Preliminarily, where a plaintiff has failed to establish a violation of his constitutional rights, there can be no municipal liability claim. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (if plaintiff cannot show that her constitutional rights were violated by a City actor, then there cannot be *Monell* liability); *see also Segal v. City of New York*, 459 F.3d 207, 219 (2d Cir. 2006) ("[*Monell*] *extends* liability to a municipal organization where …the policies or customs that it has sanction, led to an independent constitutional violation."). As discussed *infra*, plaintiffs cannot demonstrate that the sobriety checkpoint at which they were stopped was

unconstitutional as it was implemented as a safety measure to prevent driving while intoxicated rather than as a general undefined law enforcement measure. Thus, the *Monell* claim should be dismissed for that reason alone.

Nevertheless, even if plaintiffs could demonstrate that their constitutional rights were violated the *Monell* claim would still fail. First, plaintiffs have failed to articulate any formal, officially promulgated, policy that led to such alleged deprivations. The failure to identify such a formal policy is fatal. *Kovalchik v. City of New York*, 2014 U.S. Dist. LEXIS 132178 (S.D.N.Y. Sept. 18, 2014) (Abrams, J.) (granting defendants' motion for summary judgment as to plaintiff's Monell claim due to her inability to identify an official City policy that caused her injury).

Second, in addition to failing to identify a formal policy, plaintiffs have failed to identify a practice so widespread as to have the effect of a formal policy. While plaintiffs have alleged that the City has a pattern or practice of conducting unconstitutional sobriety checkpoints resulting in unlawful stops and arrests, plaintiffs cannot survive summary judgment based on the allegations in their complaint alone. *Scotto v. Almenas*, 143 F.3d 105, 113 (2d Cir. 1998). Moreover, plaintiffs have not adduced any evidence that such pattern or practice exists. Without any evidence of a widespread pattern or practice, the *Monell* claim fails. *Vasquez v. City of New York*, 16-cv-5296 (GHW), 2018 U.S. Dist. LEXIS 78429 at *15 (S.D.N.Y. May 9, 2018). Plaintiffs also cannot establish the existence of a policy practice based on the alleged improprieties of actors below the policymaking level. *Haus v. City of New York*, 03 Civ. 4915(RWS)(MHD), 2011 U.S. Dist. LEXIS 155735 at *225 (S.D.N.Y. Aug. 31, 2011).

Finally, there is no credible evidence that the City was deliberately indifferent. "[T]he inadequacy of [officer] training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the [officer] come

into contact." *City of Canton*, 489 U.S. at 388; *see also Connick v. Thompson*, 563 U.S. 51, 61 (2011) (noting that "a municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train."). To meet this stringent standard of fault, a plaintiff must show that: "(1) policymaker knows to a moral certainty that its employees will confront a given situation; (2) either situation presents employees with difficult choice that will be made less so by training or supervision, or there is a record of employees mishandling situation; and (3) wrong choice by employees will frequently cause deprivation of constitutional rights." *Cash v. County of Erie*, 654 F.3d 324, 333-334 (2d Cir. 2011) (quoting *Walker v. City of New York*, 974 F.2d 293, 297-98 (2d Cir. 1992)). Municipal liability will not attach without "identify[ing] a specific deficiency in the city's training program and establish[ing] that [the] deficiency is closely related to the ultimate injury, such that it actually caused the constitutional deprivation." *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 129-30 (2d Cir. 2004).

Plaintiffs have neither alleged, nor adduced any evidence of, a specific deficiency in the City's training programs in relation to the implementation of and/or administration of sobriety checkpoints; nor could they, given that plaintiffs did not conduct any discovery regarding NYPD training regarding sobriety checkpoints. Plaintiffs' *Monell* claim, based on a theory of failure to adequately train or supervise, must thus be dismissed.

CONCLUSION

For the foregoing reasons, defendants City of New York, Officer Emmanuel Delacruz, and Sergeant Noel Jugraj, respectfully request that the Court grant defendants' summary judgment motion and dismiss the Amended Complaint in its entirety, together with such other and further relief the Court deems just and proper.

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