

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MATTHEW STEPHEN SHEPLER,)	
Plaintiff-Appellant,)	
)	Case No.
-against-)	
)	[N.Y. No. 1:17-cv-10254 (ER) (OTW)
MICHAEL COLLURA,)	S.D.N.Y.]
Defendant-Appellee.)	
)	
)	

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

APPELLANT'S OPENING BRIEF

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10 MATTHEW STEPHEN SHEPLER,
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14 Plaintiff-Appellant,
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18 -against-
MICHAEL COLLURA,
Defendant-Appellee.

Case No.
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(OTW) S.D.N.Y.]

**OPENING BRIEF OF MATTHEW
STEPHEN SHEPLER**

Judge: Hon. Edgardo Ramos
Dep't: Courtroom # 619

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I.

**JURISDICTIONAL STATEMENT, STATEMENT OF ISSUES PRESENTED FOR
REVIEW, CONCISE STATEMENT OF THE CASE, AND SUMMARY OF
ARGUMENT**

JURISDICTIONAL STATEMENT

The basis for the district court's subject-matter jurisdiction was 28 U.S. Code, § 1331 (“The district courts shall have original jurisdiction of all civil action arising under the Constitution, laws, or treaties of the United States.” (28 U.S. Code, § 1331)); 42 U.S. Code, § 1983 against the defendant, Michael Collura, a detective employed within the the New York City Police Department (NYPD) Intelligence Division, Public Security Section, Shield # 7632. In a civil action for deprivation of rights under federal jurisdiction of Section 1983,

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law (42 U.S. Code, § 1983).

Plaintiff-appellant filed his original complaint under 42 U.S. Code, § 1983 on the date of December 28, 2017 and amended two times on the dates of March 28, 2018 and May 24, 2018 (Order p. 3). Pursuant to Fed. R. Civ. P., § 8 (a) (1), the court already held jurisdiction under federal statute 42 U.S. Code, § 1983 because in the general rules of

2 pleading, “a short and plain statement of the grounds for the court's jurisdiction, [is
4 required] unless the court already has jurisdiction and the claim needs no new
6 jurisdictional support” (Fed. R. Civ. P., § 8 (a) (1)).

8 In similarity, the basis for the court of appeals' jurisdiction is 28 U.S. Code, §
10 1291. Plaintiff-appellant provided a notice of appeal to the United States District Court
12 for the Southern District of New York, as well as the defendant in the case on the date of
14 March 10, 2020 by United States Postal Service (USPS). Here, final decisions taken
16 from district courts are reviewed for appeal under section 1291 of Title 28, whereas,

18 [t]he courts of appeals (...) shall have jurisdiction of appeals from all final
20 decisions of the district courts of the United States (...) except where a direct
22 review may be had in the Supreme Court. The jurisdiction of the United States
24 Court of Appeals for the Federal Circuit shall be limited to the jurisdiction
26 described in sections 1292 (c) and (d) and 1295 of this title. (28 U.S. Code, §
28 1291).

30 According to the record of proceeding, the prosecution terminated on the date of
32 December 18, 2017 (Record of Proceeding p. 1). Thereafter, a second amended
34 complaint was filed on the date of May 24, 2018 pursuant to the one-year statute of
36 limitations set forth in N.Y. C.P.L.R., § 215 (3) (“The following actions shall be
38 commenced within one year: (...) an action to recover damages for assault, battery, false
40 imprisonment, malicious prosecution” (N.Y. C.P.L.R., § 215 (3)). Plaintiff-appellant

2 filed a motion for extended time for service of summons and complaint on the date of
4 September 06, 2018 (Notice of Motion for Extended Time p. 1). See Fed. R. Civ. P., § 4
6 (m),

8 If a defendant is not served within 90 days after the complaint is filed, the court—
10 on motion or on its own after notice to the plaintiff—must dismiss the action
12 without prejudice against that defendant or order that service be made within a
14 specified time. But if plaintiff shows good cause for the failure, the court must
16 extent the time for service for an appropriate period. (Fed. R. Civ. P., § 4 (m)).

18 Hon. Edgardo Ramos granted the motion on October 04, 2018 (Order on Motion for
20 Extended Time p. 2). Summons was issued on the date of December 07, 2018, as the
22 summons was executed on the date of February 05, 2019 at 09:54 a.m. by United States
24 Marshal Service (USMS) (Marshal's Process Receipt and Return of Service Executed
26 Complaints p. 1). Thereafter, counsel for defendant filed a motion to dismiss for failure
28 to state a claim pursuant to Fed. R. Civ. P., § 12 (b) (6). Counsel for defendant provided
30 notice of Civil L.R., § 12.1—See *Covington v. City of New York*, 171 F.3d 117 (2d Cir.
32 1999) (“the district court sua sponte converted the parties' Rule 12 (b) (6) motions into
34 motions for summary judgment under Rule 56 (c) because the parties had submitted
36 material outside the pleadings.” (*Covington v. City of New York*, 171 F.3d 117 (2d Cir.
38 1999)). On the date of February 13, 2020 Hon. Edgardo Ramos submitted an order and
40 opinion granting Collura's motion to dismiss, and directed the clerk to terminate the

2 motion (Order p. 12). On the date of March 10, 2020 plaintiff-appellant in the above
4 caption filed his notice of appeal within the thirty (30) day period permitted in Fed. R.
6 App. P., § 4 (a) (1) (A) (“the notice of appeal required by Rule 3 must be filed with the
8 district clerk within 30 days after entry of judgment or order appealed from. (Fed. R.
10 App. § 4 (a) (1) (A)).

12 The appellant asserts that this petition for appeal is from a final order of the
14 United States District Court for the Southern District of New York. The order and
16 opinion of Hon. Edgardo Ramos disposed of all plaintiff-appellant's claims on the date
18 of February 13, 2020 (Judgment p. 1). Because of the foregoing, plaintiff-appellant filed
20 a notice of appeal with the district clerk and petitions the United States Court of Appeals
22 for the Second Circuit under federal jurisdiction of 28 U.S. Code, § 1291 to vacate the
24 February 13, 2020 order and opinion of Hon. Edgardo Ramos and remand the case for
26 further proceedings.

28 STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

30 Pursuant to 28 U.S. Code, § 1291 Matthew Stephen Shepler, plaintiff-appellant
32 in the above-captioned case, hereby appeal to the United States Court of Appeals for the
34 Second Circuit. Order was entered on February 13, 2020 in the United States District
36 Court for the Southern District of New York granting defendant, Michael Collura's
38 motion to dismiss. All motions have been timely filed, and the court holds jurisdiction
40 pursuant to 42 U.S. Code, § 1983. All facts necessary to analyze the problem have been

provided in the record. The issues on appeal are:

1. (1) Did the defendant in the above caption deny the plaintiff-appellant a constitutional right secured to him by the fourth amendment, and (2) did the defendant act under color of state law pursuant to federal statute 42 U.S. Code, § 1983?

2. Did police misconduct of the defendant include (i) malice, (ii) suppression of evidence in relations to withholding evidence from information that he swore to, and (iii) a denial of recognizance pursuant to N.Y. C.P.L., § 530.20 (1) (2019) on or about the date of September 28, 2017; N.Y. Penal Law, §§ 10.00 (3), 70.15 (4), 240.20, 70.30 (3))?

3. With respect to jail-time credit pursuant to N.Y. Penal Law, § 70.30 (3), did a fifty-day period of pre-trial detention deprive the plaintiff-appellant his right to unreasonable seizure secured to him by the fourth amendment when the prosecution was terminated with a coerced guilty plea to a violation that is only punishable by up to fifteen days (See N.Y. Penal Law, §§ 10.00 (3), 70.15 (4), 240.20, 70.30 (3))?

4. With rebuttable evidence in regards to malice, suppression of evidence in relations to evidence withheld from information that defendant swore to, and a denial of recognizance, did the plaintiff satisfy the favorable termination element of malicious prosecution?

2 A CONCISE STATEMENT OF THE CASE SETTING OUT THE FACTS RELEVANT
3 TO THE ISSUES SUBMITTED FOR REVIEW

4 Relevant procedural history

6 In order to provide a concise statement of the case, plaintiff-appellant contends
8 that he was arrested on the date of September 27, 2017 by defendant-appellee, Michael
10 Collura, a detective within the New York City Police Department (NYPD) (Verified
12 Complaint p. 3-4) (Memorandum of Law p. 6). Plaintiff-appellant was denied
14 recognizance on or about the date of September 28, 2017 (Memorandum of Law p. 3),
16 and transported to George R. Vierno Center (GRVC) on the date of October 03, 2017
18 (Verified Complaint p. 7). See N.Y. C.P.L., § 530.20 (1) (2019) (“When the defendant is
20 charged, by information, simplified information, prosecutor's information or
22 misdemeanor complaint, with an offense or offenses of less than felony grade only, the
24 court must order recognizance or bail”). According to the record of *People v. Shepler*,
26 No. 2017NY050546, plaintiff-appellant in the above caption was released on his own
28 recognizance (ROR) on the date of November 15, 2017 (Record of Proceeding p. 1). In
30 order to provide the court additional information that relates toward this matter, the
32 prosecution terminated on the date of December 18, 2017 with a plea to N.Y. Penal Law,
34 § 240.20 (Record of Proceeding p. 1).

36 Plaintiff-appellant timely filed his second amended complaint pursuant to Fed. R.
38 Civ. P., § 8 (a) (1); 42 U.S. Code, § 1983 on the date of May 24, 2018. On the date of
40 December 07, 2018 the court issued a summons to Michael Collura through United

2 States Marshals Service (USMS). On the date of February 07, 2018 the complaint was
4 properly served by summons on the defendant by USMS (Process Receipt and Return p.
6 1). The defendant-appellee by Evan F. Jaffe filed a motion to dismiss on the date of
8 March 29, 2019. Plaintiff-appellant filed his opposition papers on May 07, 2019.
10 Defendant-appellee by Evan F. Jaffe filed his reply papers on May 28, 2019. An opinion
12 and order memorandum from Hon. Edgardo Ramos was filed on the date of February
14 13, 2020. Additional exhibits were filed on the date of March 10, 2020 supporting (i)
16 that the defendant-appellee suppressed evidence in relations to evidence that he withheld
18 from information that he swore to, and (ii) that the police misconduct of the defendant-
20 appellee resulted with a denial of recognizance pursuant to C.P.L., § 530.20 (1) (2019)
22 on the date of September 28, 2017 (Order of Protection p. 1).

24 Facts relevant to the issues submitted for review

26 Plaintiff-appellant alleges that defendant-appellee was Michael Collura, a
28 detective employed within the public safety and intelligence division of the NYPD, and
30 sworn out of an accusatory instrument (Verified Complaint p. 3). Defendant-appellee
32 arrested and transported plaintiff-appellant to Manhattan Detention Center (MDC) on
34 the date of September 27, 2017 (Verified Complaint p. 7). Plaintiff-appellant alleges that
36 defendant-appellee “Michael Collura, an agent, servant and/or employee of the New
38 York City Police Department—an agency of the City of New York—with granted
40 authority of the state, showed [his] authority when arresting and escorting [p]laintiff”

2 (Verified Complaint p. 7), and is “vicariously liable” for suffering conditions, police
4 misconduct, and liberty deprivation (Verified Complaint p. 6-8).

6 In his second verified complaint, plaintiff-appellant alleges that he attained a
8 political medallion, and posed in a photograph (Verified Complaint p. 2). The plaintiff-
10 appellant alleges more that the defendant-appellee attained a photograph that he placed
12 onto a desk within the 19th Precinct (Verified Complaint p. 5). Defendant-appellee swore
14 to an information, an accusatory instrument on the date of September 29, 2017
16 (Accusatory Instrument p. 3). Plaintiff-appellant alleges more that defendant-appellee
18 suppressed information from an information that he swore to (Verified Complaint p. 8).

20 Plaintiff-appellant in the above caption alleges that the February 13, 2020 order
22 and opinion of Hon. Edgardo Ramos should be vacated, and the case remanded for
24 further proceedings because of the fact that with respect to jail-time credit pursuant to
26 N.Y. Penal Law, § 70.30 (3) did a fifty-day period of pre-trial detention deprive the
28 plaintiff-appellant his right to unreasonable seizure secured to him by the fourth
30 amendment with a coerced guilty plea to a violation that is only punishable by up to
32 fifteen day (See N.Y. Penal Law, §§ 10.00 (3), 70.15 (4), 240.20, 70.30 (3)). See N.Y.
34 Penal Law, § 70.30 (3) (“The term of a (...) sentence imposed on a person shall be
36 credited with and diminished by the amount of time the person spent in custody prior to
38 the commencement of such sentence as a result of the charge that culminated in the
40 sentence”). (See plaintiff-appellant's Verified Complaint p. 7-8, “[p]laintiff served

2 roughly 50 days confined and restricted from civil[ian] society for allegations that did not
4 lead to the conviction of a crime.” (Verified Complaint p. 7),

6 The police conduct of Michael Collura was unlawful and caused the Plaintiff to
8 be transported for the arraignment and malicious prosecution of alleged charges
10 that hold no absolute truth, as this was a penalty that included more than 15 days
12 as allocated in (...) New York Penal Law—NY Penal Law § 70.15 (4) (2015).
14 (Verified Complaint p. 7-8)).

16 In his second verified complaint, plaintiff-appellant alleges that defendant-appellee
18 violated his fourth amendment rights (Verified Complaint p. 6-8),

20 [t]he right of the people to be secure in their persons, houses, papers, and effects,
22 against unreasonable searches and seizures, shall not be violated, and no Warrants
24 shall issue, but upon probable cause, supported by Oath or affirmation, and
26 particularly describing the place to be searched, and the persons or things to be
28 seized. (U.S. Const. amend. IV).

30 Plaintiff-appellant alleges that the defendant-appellee acted with malice (Verified
32 Complaint p. 4-5). Plaintiff-appellant alleges more that constituted extreme and
34 outrageous activity (Verified Complaint p. 8-9). Plaintiff-appellant believes that because
36 of a liberty deprivation that occurred during his pre-trial detention, plaintiff-appellant
38 suffered from an injury to his psychological wellbeing that derived from emotional and
40 mental distress (Verified Complaint p. 8-9). Plaintiff-appellant alleges more that he

suffered from an injury to his reputation (Verified Complaint p. 9-10).

Rulings presented for review

Plaintiff was arrested by the defendant on stalking and harrassment charges.

After arraignment, the plaintiff plead to the lower charge of disorderly conduct, N.Y.

Penal Law, § 240.20. Plaintiff petitions that the defendant lacked probable cause

(Verified Complaint p. 2-3; p. 5-6). Further evidence was provided in Exhibits A, B, D,

G, and K. Plaintiff petitions more that defendant acted with actual malice (Verified

Complaint p. 5). Plaintiff's second amended complaint was filed against the arresting

detective who initiated prosecution — “[t]o hold an individual personally liable under §

1983, a plaintiff must show that he or she (...) directly participated in actions resulting

in a constitutional deprivation” (*Robbins v. Doe*, 994 F. Supp. 214, 218 (S.D.N.Y.

1998)).

Plaintiff in the above caption is a self-represented litigant permitted under federal

statute 28 U.S. Code, § 1654, “[i]n all courts of the United States the parties may plead

and conduct their own cases personally” (28 U.S. Code, § 1654). Even though the

plaintiff is a self-represented litigant, he is required to be permissive of rules and

procedures governing such actions— “in determining the sufficiency of a *pro se*

complaint, it is now axiomatic that a court must construe it liberally, applying less

stringent standards than when a plaintiff is represented by counsel” (*Robles v. Coughlin*,

725 F.2d 12, 15 (2d Cir. 1983)). In his complaint, plaintiff alleges claims such as lack of

2 probable cause, suppression of evidence, liberty deprivation, emotional and mental
4 distress, malicious prosecution, and violation of U.S. Const. amend. IV. (Verified
6 Complaint p. 7-10).

8 **II.** **ARGUMENT**

10 Plaintiff in the above caption argues that his malicious prosecution claim isn't
12 barred because of a plea to a lower charge of disorderly conduct. Plaintiff petitions more
14 that his fifty (50) days of confinement developed a pre-trial detention that exceeds state
16 sentencing statutes and plaintiff's right to jail-time credit violates his fourth amendment
18 rights. Psychological injuries were inflicted unto the plaintiff, as well as injuries to his
20 reputation. From the date the action accrued, December 18, 2017 to the date the second
22 amended complaint was filed on May 24, 2018 fell within the time permitted by law.
24 Because of the crimes charged and his fabrication of evidence, the defendant is
26 responsible for malicious prosecution litigation under Section 1983.

28 **A. Malicious prosecution claim isn't barred because of a coerced guilty plea.**

30 Plaintiff was arrested on the date of September 27, 2017 on stalking and
32 harrassment charges. Plaintiff pleaded guilty to disorderly conduct, N.Y. Penal Law, §
34 240.20 on the date of December 18, 2017. Even though disorderly conduct is classified
36 as a violation pursuant to N.Y. Penal Law, § 10.00 (3), the actual prosecution derived
38 from criminal charges that were brought forth against him by a detective who initiated
40 prosecution—"in order to properly plead a § 1983 claim based on malicious

2 prosecution, the allegedly malicious prosecution must be criminal (...) in nature.”
4 (*Lacara v. Town of Islip*, 791 F.Supp. 69, 70 (1992)). Plaintiff's claim is supported by
6 two case opinions that hold precedent under New York law. Mainly, because of
8 constitutional claims that derive under the federal jurisdiction of 42 U.S. Code, § 1983.

10 In the judicial opinion of *Keyes v. City of Albany*, 594 F. Supp. 1147 (1984), the
12 plaintiff “pleaded guilty, with the assistance of counsel, to a reduced charge of disorderly
14 conduct in violation of N.Y. Penal Law § 240.20” (*Keyes v. City of Albany*, 594 F. Supp.
16 1147, 1152 (1984)), and was awarded compensatory damages for her constitutional
18 claim. In similarity, in the opinion of *Roundtree v. City of New York*, 778 F. Supp. 614,
20 616 (E.D.N.Y. 1991), the plaintiff “pleaded guilty to disorderly conduct and paid a \$100
22 fine (*Roundtree v. City of New York*, 778 F.Supp. 614, 616 (E.D.N.Y. 1991)), as his
24 1983 claim survived a defendant's motion to dismiss because of a due process claim.
26 Under New York law, the plaintiff's claim should survive because “if the alleged
28 malicious prosecution is more criminal (...) in nature, and if the alleged conduct shocks
30 the conscience of the Court, then plaintiff's complaint withstands defendant's motion to
32 dismiss.” (*Lacara v. Town of Islip*, 791 F.Supp. 69, 71 (1992)).

34 Malicious prosecution is a common-law tort that includes a liberty deprivation
36 during pre-trial detention.¹ Federal malicious prosecution claims are brought as a Section
38 1983 claim because they include a constitutional deprivation.² Malicious prosecution

1 Erin E. McMannon, 2019, p.1479.

2 Erin E. McMannon, 2019, p.1479.

2 requires a lack of probable cause under the search and seizure clause of the fourth
4 amendment. Therefore, when probable cause is the main argument, malicious
6 prosecution claims are still actionable under Section 1983 because of the fact that police
8 misconduct may have caused a constitutional deprivation. As there is a close relationship
10 between the common-law tort of malicious prosecution and constitutional deprivation
12 relating toward the direction of a pre-trial detention, “[t]he common-law tort of
14 malicious prosecution originally developed to provide a remedy for plaintiffs who were
16 unjustly prosecuted in a criminal proceeding.” (Erin E. McMannon, *The Demise of the §*
18 *1983 Malicious Prosecution: Separating Tort Law from the Fourth Amendment*. (94
20 Notre Dame L. Rev. 1479, 1480 (2019))).

22 **1. Malicious prosecution claim authorized by statute of limitations**
24 **defined within N.Y. C.P.L.R., § 215 (3) does not time bar the action, as**
26 **the claim was filed within one year of the December 18, 2017**
28 **conviction.**

30 The New York State statute of limitations for a malicious prosecution claim is a
32 period of one (01) year pursuant to N.Y. C.P.L.R., § 215 (3). Even though this is the
34 case, federal courts have been known to extend the period of up to three (03) years for
36 such claims. Plaintiff was arrested on the date of September 27, 2017. Prosecution was
38 terminated on December 18, 2017 with an unconstitutional plea to disorderly conduct.
40 Thereafter, a complaint was filed on the date of December 28, 2017 and amended into a
42 second amended complaint on the date of May 24, 2018. The date that the prosecution
terminated on December 18, 2017 to the date the second amended complaint was filed

2 on May 24, 2018 creates a five (05) month period that falls well within the time
4 permitted by N.Y. C.P.L.R., § 215 (3).

6 **2. Malicious prosecution claim includes a Fourth Amendment,
probable cause claim.**

8 Every prosecution includes risks to a person's liberty.³ It is common for plaintiffs
10 to include a malicious prosecution claim in 1983 litigation.⁴ Because of the fact that
12 malicious prosecution includes a constitutional deprivation, it has been disputed whether
14 or not the deprivation occurs under the fourth or fourteenth amendment.⁵ Typically, the
16 deprivation falls back on a fourteenth amendment due process claim when the court
18 determines that the officer held probable cause to arrest.⁶ When a plaintiff claims that he
20 or she was a victim of an alleged malicious prosecution, protection is available for
22 unlawful detention because

24 '[w]hen, after the arrest or seizure, a person is not let go when he should be, the
26 Fourth Amendment gives way to the due process clause as a basis for challenging
28 his detention.' Thus, the Seventh Circuit required a tie to a specific constitutional
30 provision, but the provision was the Fourteenth, rather than the Fourth,
32 Amendment. (Erin E. McMannon, *The Demise of the § 1983 Malicious
34 Prosecution: Separating Tort Law from the Fourth Amendment*. (99 Notre
36 Dame L. Rev. 1479, 1487 (2019))).

3 Lyle Kossis, 2013, p.1644.

4 Lyle Kossis, 2013, p.1636.

5 Erin E. McMannon, 2019, p.1484.

6 *Keyes v. City of Albany*, 594 F. Supp. 594 F. Supp. 1147 (N.D.N.Y. 1984).

2 Under New York law, when probable cause is present because of a conviction to a
4 'violation' in a criminal proceeding, there is high risk for liberty deprivation during an
6 unlawful pre-trial detention. In this case, a conviction to a lesser charge provides that, "it
8 is 'well established that adherence to procedural forms will not save a conviction that
10 rests in substance on false evidence of deliberate deception.'" (Eric J. Wunsch, *Fourth
12 Amendment and Fourteenth Amendment—Malicious Prosecution § 1983: Is There A
14 Constitutional Remedy under Section 1983?* (85 J. Crim. L. & Criminology 878, 897
16 (1995))).

18 **3. Termination of criminal action that was initiated by the defendant
supports malicious prosecution litigation under the fourth amendment.**

20 Compared to civil actions, the malicious prosecution was more criminal in nature.
22 Plaintiff was arrested on criminal charges on the date of September 27, 2017. During an
24 adjudication of guilt, the record shows that the plaintiff was confined and restricted from
26 society for fifty (50) days until he was released on his own recognizance on November
28 15, 2017. A plea to the violation of disorderly conduct, N.Y. Penal Law, § 240.20 on the
30 date of December 18, 2017 creates a deprivation of the fourth amendment—mainly,
32 because it provides proof that a pre-trial, fifty (50) day detention exceeds the time
34 permitted in N.Y. Penal Law, §§ 10.00 (3), 70.15 (4) in respect to jail-time credit
36 pursuant to N.Y. Penal Law, § 70.30 (3). According to the record of the proceeding, a
38 cause of action for a malicious prosecution claim regarding a fourth amendment
40 deprivation began on the date of December 18, 2017 because "[o]nce a cause of action

2 for a constitutional violation accrues, nothing that the state does subsequently can cut off
4 the § 1983 claim.” (*Patterson v. Coughlin*, 761 F.2d 886, 892 (2d Cir. 1985)).

6 **B. Fourth Amendment malicious prosecution claim is Section 1983 litigation.**

8 Section 1983 claims are actionable by violations of constitutional rights.⁷ The
10 fourth amendment is used in Section 1983 claims to grant remedies to a plaintiff for
12 constitutional torts that derive from state-court prosecution. The court needs to
14 determine if a protected interest was violated because of police misconduct. In other
16 words, the reasons for the fabrication of evidence and state procedures should be
18 analyzed.

20 Under New York law, in order for a plaintiff “[t]o assert a § 1983 claim, a plaintiff
22 must allege that certain conduct, committed by a person under color of state law,
24 resulted in a deprivation of the plaintiff’s rights [secured] under the Constitution of the
26 United States.” (*Robbins v. Doe*, 994 F.Supp. 214, 217 (S.D.N.Y. 1998)). In his second
28 amended complaint, plaintiff claims that the arresting officer acted with police
30 misconduct in order to arrest him. The constitution regulates the power of government.⁸
32 Constitutional torts are actionable against state and local officers under the federal
34 jurisdiction of 42 U.S. Code, § 1983.⁹ Compared to state claims of malicious
36 prosecution, “in Section 1983 action, a plaintiff must be able to show that federal law
38 protects the alleged right that state or local officials violated.” (Lyle Kossis, *Malicious*

7 Lyle Kossis, 2013, p.1647.

8 Lyle Kossis, 2013, p.1635.

9 Lyle Kossis, 2013, p.1635.

2 *Prosecution Claims in Section 1983 Lawsuits.* (99 Virginia L. Rev. 1635, 1640) (2013))).

4 The defendant's misconduct such as suppression of evidence in his information, resulted
6 in unlawful, pretrial detention “that (...) violates state law [and] is still actionable under
8 § 1983” (*Patterson v. Coughlin*, 761 F.2d 886, 891 (2d Cir. 1985)). With respect to
10 jail-time credit, constitutional deprivation and pretrial detention exceeds the maximum
12 expiration of plaintiff's sentence under N.Y. Penal Law, § 70.30 (3), and subjected him
14 “by law enforcement officers [which] deprives an individual.” (*Keyes v. City of Albany*,
16 594 F. Supp. 1147, 1154 (1984)). Malicious prosecution litigation allows plaintiff's “to
18 attack action by officials that simultaneously violated state statutes or official state
20 policies and the Constitution.” (Charles F. Abernathy, *Section 1983 and Constitutional*
22 *Torts.* (77 Geo. L. J. 1441, 1446) (1989))). Section 1983 litigation has provided aid
24 toward the development of constitutional law—mainly, in regards to constitutional
26 torts.¹⁰

28 In order to provide additional information that relates toward this matter, plaintiff
30 claims that in addition to his unconstitutional, pre-trial detention, he suffered from
32 emotional and mental distress that resulted with psychological injuries (Verified
34 Complaint p. 8-9). On or about the date of Febuary 06, 2018 plaintiff began
36 psychological treatment and medication through Dr. Leonardo Vando. A “Treating
38 Physician's Wellness Plan Report” dated July 25, 2018 shows that plaintiff was
40 diagnosed with major depressive disorder (MDD). Plaintiff alleges more that an injury

10 Charles F. Abernathy, 1989, p.1442.

2 to his reputation developed because of an article published by the New York Post,
4 “Carolyn Maloney's alleged stalker dodges jail.” (Verified Complaint p. 9-10).

6 **1. Defendant withheld facts from information during fabrication of
evidence which developed a presumption of probable cause.**

8 To provide support toward a §1983 constitutional claim, plaintiff petitions that the
10 defendant, an arresting officer who served as a detective within the New York City
12 Police Department (NYPD) suppressed evidence from his information (Verified
14 Complaint p. 2-3; p. 5-6). After examining the facts, one will conclude that “the right at
16 issue in this case is appropriately identified as the right not to be deprived of liberty as a
18 result of the fabrication of evidence” (*Zahrey v. Coffey*, 221 F.3d 342, 349 (2d Cir.
20 2000)). This is true because of the fact that the defendant supported prosecution against
22 plaintiff by withholding evidence provided to the Court in Exhibits A, B, G, H, and K. In
24 regards to the issue of probable cause, “the question of whether the deprivation of a
26 protected interest was negligent or intentional is not of constitutional dimension.”
28 (*Patterson v. Coughlin*, 761 F.2d 886, 892 (2d Cir. 1985)). The plaintiff alleges that he
30 was interviewed by Larson E. Binzer, secretary for the District Office of
32 Congresswoman Carolyn B. Maloney. After attending a democratic event, he was
34 invited to a 9 a.m. breakfast event that was hosted by the congresswoman. There, he
36 socialized and exchanged information with Miranda X. Mo, Treasurer, AmericaChina
38 Public Affairs Institute. At that time, plaintiff received a business card from Ms. Mo. In
40 similarity, plaintiff received a medallion from the congresswoman's campaign before he

2 departed from her event.

4 Police misconduct is the cause of the constitutional deprivation and injuries for
6 which compensation is sought. Mainly, because of the fact that the “... misconduct can
8 be viewed as the cause of the (...) deprivation of liberty, although courts would probably
10 refer to such misconduct as itself the denial of a constitutional right.” (*Zahrey v. Coffey*,
12 221 F.3d 342, 350 (2d Cir. 2000)). Because of the issue of probable cause, the plaintiff is
14 required to prove a deprivation of his or her protected interests secured by the
16 constitution, as well as deliberate police misconduct during the fabrication of evidence.¹¹
18 The defendant's counsel argued that probable cause existed because of an
20 unconstitutional, coerced guilty plea that violated state statutes. For those reasons,
22 plaintiff has rebutted with the police misconduct of suppression of evidence, as well as a
24 pre-trial detention that deprives plaintiff of his rights to liberty and jail-time credit
26 secured to him by the United States Constitution. In other words, a “conviction at trial
28 or by plea ‘conclusively establishes the existence of probable cause, unless the
30 conviction was obtained by fraud, perjury, or other corrupt means.’” (*Roundtree v. City*
32 *of New York*, 778 F.Supp. 614, 619 (E.D.N.Y. 1991)).

34 **2. Defendant's fabrication of evidence developed a presumption of**
36 **probable cause that supported unconstitutional pretrial detention,**
denial of recognizance, and liberty deprivation: a constitutional tort
under the fourth amendment.

38 When the defendant provided allegations in his information, used to prosecute
40

11 Charles F. Abernathy, 1989, p.1485.

2 plaintiff in an adjudication of guilt, the information created a presumption with evidence
4 that was withheld. Assuming that it was true that evidence wasn't suppressed from the
6 information used to prosecute, plaintiff would only need to be charged with a violation
8 of disorderly conduct, N.Y. Penal Law, § 240.20 and granted recognizance pursuant to
10 N.Y. C.P.L., § 530.20 (1) (2019) (“[w]hen the defendant is charged, by information,
12 simplified information, prosecutor's information or misdemeanor complaint, with an
14 offense of less than felony grade only, the court must order recognizance or bail.”).
16 Here, one should conclude that without the misconduct of the defendant, recognizance
18 was appropriate because “[i]n evaluating the constitutionality of (...) restrictions of
20 pretrial detention that implicate only the protection against deprivation of liberty (...) we
22 think that the proper inquiry is whether those conditions amount to punishment of the
24 detainee.” (*Roundtree v. City of New York*, 778 F.Supp. 614, 623 (E.D.N.Y. 1991)
26 (internal quotation marks omitted)).

28 According to the accusatory instrument, the defendant initiated prosecution by
30 charging the plaintiff with crimes of stalking. Police misconduct occurred when the
32 defendant prepared an information by withholding facts, as “[t]he penal law is intended
34 to regulate the conduct of people of all grades of intelligence within the scope of
36 responsibility. It is therefore essential to its justice and humanity that it be expressed in
38 language which they can easily comprehend (internal quotations omitted). (Theodore
40 Schroeder, 1908, p.54). A detective preparing such information should be able to

2 comprehend penal laws, and come to a conclusion that a crime wasn't being committed.
4 For that reason, defendant is responsible for a deprivation of liberty secured by the
6 constitution—“[r]ecoverly under 42 U.S.C. § 1983 (1982) is premised upon a showing,
8 first, that the defendant has denied the plaintiff a constitutional or federal statutory
10 right and, second, that such denial was effected under color of state law” (*Patterson v.*
12 *Coughlin*, 761 F.2d 886, 890 (2d Cir. 1985)). See *Kerman v. City of New York*, 374 F.3d
14 93, 124 (2d Cir. 2004) (“where the plaintiff was indisputably deprived of his liberty, and
16 the conduct of the defendant responsible for the deprivation was found to be unlawful,
18 we have held that the plaintiff is entitled to compensatory, not merely nominal,
20 damages”).

22 Liberty deprivation during a fifty-day, pre-trial detention that exceeds a sentence
24 imposed by N.Y. Penal Law, §§ 10.00 (3), 70.15 (4), violates plaintiff's constitutional
26 rights because of a denial of jail-time credit pursuant to N.Y. Penal Law, § 70.30 (3). See
28 *Douthit v. Jones*, under constitutional law

30 Douthit (...) alleged that the defendants imprisoned him for thirty days beyond
32 the sentence imposed upon him without a valid commitment order. Detention of a
34 prisoner thirty days beyond the expiration of his sentence (...) constitutes a
36 deprivation (...). Thus, Douthit asserted a prima facie violation of § 1983 by
38 alleging that the defendants, acting under the authority granted to them by Texas
40 law, deliberately confined him (*Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir.

1980) .

2 Here, the plaintiff alleges that he was arrested on the date of September 27, 2017 and
4 denied recognizance until the date of November 15, 2017—therefore, confined for a
6 fifty (50) day period. After plaintiff's release from detention, criminal prosecution was
8 terminated with an unconstitutional, coerced guilty plea to disorderly conduct. In the
10 judicial decision of *Robbins v. Doe*, 994 F. Supp. 218 (S.D.N.Y. 1998), a method
12 develops when we are “[d]etermining whether the length of pretrial detention is
14 constitutionally excessive requires a factual analysis which balances the length of the
16 detention against the reasons for the detention.” (*Robbins v. Doe*, 994 F. Supp. 214, 218
18 (S.D.N.Y. 1998)). See *Zahrey v. Coffey*, 221 F.3d 342, 348 (2d Cir. 2000) (“[t]he liberty
20 deprivation is the eight months he was confined, from his bail revocation (after his
22 arrest) to his acquittal”).

24
26 **3. Plaintiff-appellant suffered an injury to his reputation, as well as additional psychological injuries that were inflicted upon him.**

28 After the prosecution terminated on December 18, 2017 an injury occurred to the
30 plaintiff's reputation when an article was published by the New York Post, “Carolyn
32 Maloney's alleged stalker dodges jail” on December 19, 2017. Because of the police
34 misconduct of the defendant, plaintiff was treated for psychological injuries that were
36 inflicted upon him. From the dates of February 06, 2018 to June 29, 2018 plaintiff was
38 treated and prescribed medication by Ms. Parnaz of Dr. Leonardo Vando. Thereafter,
40 plaintiff received a “Treating Physician's Wellness Plan Report” classifying his current

2 diagnoses as Major Depressive Disorder (MDD), dated July 25, 2018. These facts
4 should provide additional aid to the claim that the plaintiff is entitled to judgment in his
6 favor because “where the jury has found a constitutional violation and there is no
8 genuine dispute that the violation resulted in some [type of] injury to the plaintiff, the
10 plaintiff is entitled to an award of compensatory damages as a matter of law.” (*Kerman*
12 *v. City of New York*, 374 F.3d 93, 124 (2d Cir. 2004)).

14 Compensatory and punitive damages should be awarded to the plaintiff because of
16 the fact that defendant's malice and forced subjection of plaintiff increased risks to harm
18 and danger, and resulted with psychological injuries that were inflicted upon him.

20 Typically, general damages are awarded for injuries relating to emotional distress.¹² 1983
22 litigation is intended to award victims who were deprived of constitutional rights.

24 **III.** **CONCLUSION**

26 Defendant's fabrication of information that included withholding evidence
28 increased risks to the danger and harm of plaintiff. Defendant used extreme and
30 outrageous conduct to place plaintiff into apprehension of immediate harm. Pre-trial
32 detention that exceeds a sentence with respect to jail-time credit is a deprivation of
34 constitutional rights. Defendant's malice supports claims for punitive damages.¹³

36 Section 1983 litigation provides remedies to victims who were deprived of
38 constitutional rights which “can be illustrated by allusion to the cases that define rights

12 Karen M. Blum and Kathryn R. Urbonya, 1998, p. 109.

13 Karen M. Blum and Kathryn R. Urbonya, 1998, p. 110.

2 of pre-trial detainees. Since such persons have not yet been convicted, and may never be
4 (...) [t]he Court has nevertheless recognized a general due process right to freedom from
6 the infliction of punishment before conviction” (Charles F. Abernathy, *Section 1983 and*
8 *Constitutional Torts*. (77 Geo. L. J. 1441, 1465) (1989)). The arresting officer acted
10 under color of law because he used the authority of state law to subject, or cause to be
12 subjected, the defendant of a state-court prosecution, and further represented the
14 government's interests.¹⁴ Section 1983 provides aid to remedies challenging the police
16 misconduct of officers in violation of state statutes.¹⁵ See *Kerman v. City of New York*,
18 374 F.3d 93, 125 (2d Cir. 2004) (“an award of several thousand dollars may be
20 appropriate simply for several hours' loss of liberty”). After analyzing plaintiff's pre-trial
22 detention in respect to his right to jail-time credit, one should conclude that the district
24 court should exercise supplemental jurisdiction for state claims of emotional and mental
26 distress, as well as injuries to his reputation and psychological wellbeing—in other
28 words, plaintiff should be entitled to compensatory damages of \$5,000.00 (USD) for a
30 thirty-day period of unconstitutional confinement.

32 The defendant-appellee in the above caption is responsible for the § 1983 claim
34 because of the fact that his police misconduct resulted with an unlawful pre-trial
36 detention that violated plaintiff-appellant's constitutional rights. Plaintiff-appellant
38 alleges that defendant-appellee's actions were an act of malice. Presumptions developed

14 Charles F. Abernathy, 1989, p.1472.

15 Charles F. Abernathy, 1989, p.1467.

2 by fabrication of evidence resulted with an unconstitutional deprivation and proves that
4 plaintiffs were unjustly prosecuted in a criminal proceeding. Plaintiff-appellant suffered
6 from an injury to his reputation, as well as psychological injuries that were inflicted
8 upon him because of a pre-trial liberty deprivation that exceeds time permitted in N.Y.
10 Penal Law, §§ 10.00 (3), 70.15 (4). Defendant-appellee's motion to dismiss pursuant to
12 Fed. R. Civ. P., § 12 (b) (6) should be treated as one under Rule 56 (c) for summary
14 judgment, and denied. Because of the foregoing, the February 13, 2020 order and
16 opinion of Hon. Edgardo Ramos should be vacated, and the case remanded for further
18 proceedings.

20 Respectfully submitted,

22 Dated: November 09, 2020.
24 New York, New York

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