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# Hughes Hubbard & Reed

## Hughes Hubbard Achieves Victory for New York City and Two Police Officers

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**March 24, 2017** — Representing New York City and two police officers in New York Supreme Court, Kings County, Hughes Hubbard obtained dismissal of a civil rights action seeking \$10 million in alleged damages.

In May 2009, the plaintiff visited a high-ranking member of the Bloods gang known as "Nuke" at Brookdale Hospital in Brooklyn. At that time, the NYC Police Department intercepted telephone calls indicating that Nuke had a gun in his hospital room. The police dispatched the officer defendants to investigate. When they arrived, the officers recovered a loaded gun from an individual who had been visiting Nuke at the same time as the plaintiff.

The officers arrested four males who were in and around Nuke's room, including the plaintiff. Ultimately, after two of those men pleaded guilty to possession of the gun, the Kings County District Attorney's office discontinued its case against the plaintiff and the remaining individual arrested with him. The plaintiff then sued the city and the officers, alleging a number of causes of action under federal and state law.

On behalf of the defendants, HHR successfully moved to dismiss the plaintiff's municipal liability claim against the city, as well as a host of other defective claims against the defendants. The remaining claims -- claims under federal civil rights law against the officers and malicious prosecution claims against all defendants under New York state law -- proceeded through discovery.

Following the close of discovery, HHR moved for summary judgment on the plaintiff's remaining claims. On Feb. 15, the court granted that motion in its entirety, largely reiterating the arguments HHR made in the briefing.

The court found that the officers lawfully arrested the plaintiff. In dismissing the malicious prosecution claims, the court held that the district attorney's office exercised its independent judgment in prosecuting the plaintiff, breaking the chain of causation between the officers' conduct and that prosecution. In reaching that finding, the court relied on multiple affidavits HHR secured from the two assistant district attorneys who led the criminal

prosecution against the plaintiff.

The court also rejected the plaintiff's remaining claims (denial of a fair trial based on alleged fabrication of evidence, unlawful search and failure to intervene).

Finally, the court found that even if the plaintiff were to successfully prove his claims, the officer defendants are entitled to qualified immunity as a matter of law. Qualified immunity protects an officer who incorrectly concludes that probable cause exists for an arrest, if officers of reasonable competence could disagree on whether the test for probable cause had been met. Considering the "totality of circumstances," the court found that probable cause existed for the plaintiff's arrest.

Dan Weiner, Ken Katz, Justin Ben-Asher, Jacob Gartman and firm alums Jesse Jensen and Kelly Foos worked on this matter. Katz argued the motion for summary judgment before the court. NYC's corporation counsel praised Katz for his "hard work, professionalism and dedication to the litigation in the Braxton case."

## **Related People**



**Daniel H. Weiner**



**Kenneth M. Katz**