

**CONNECTICUT
PRIMA
CONFERENCE**

**PUBLIC ENTITY LIABILITY
CASELAW UPDATE**

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Doe v Plainville, ___ Conn. App. ___ (2025)

In 7 consolidated suits, each entitled *Jane Doe v Kyle Fasold et al.*, the Town of Plainville was sued for negligence and negligent supervision after a volunteer for an area swim team that used the Town pool was arrested for invasion of privacy and sexual exploitation by the taking of photographs of girls in stages of undress in the women's locker room and bathroom. Specifically, Kyle Fasold, a volunteer for the Plainville Blue Dolphins swim club, was accused of taking photographs into the girl's locker room through a window in a wall that was common with a storage area. The window was covered with cardboard/oak tag material, that Fasold allegedly was able to tamper with, so that an iPhone camera could take photos and video. The Town of Plainville's Recreation Department's involvement was it allowed the Blue Dolphins to use the high school pool, it provided lifeguards during Blue Dolphins practices, and it provided coaches for the Blue Dolphins swimmers. The Town was not involved in the approval or assignment of Blue Dolphin volunteers.

The Town defended all 7 suits by claiming entitlement to discretionary act immunity, advancing the argument that the inspection, maintenance and supervision of the Blue Dolphins use of the pool, was up to the judgment and discretion of the Town's recreation and custodial staff, and that none of the plaintiffs was identifiable as being at risk of imminent harm; and, finally, that the Town had no liability for the actions of a non-town employee (Fasold); and, regardless, had immunity for the intentional criminal acts of Fasold.

The trial court granted summary judgment for Plainville in all seven suits.

The plaintiffs appealed and looked to defeat the Town's discretionary act immunity by claiming the Town had a mandatory obligation to put a solid barrier over the window through which Fasold was able to take his photos and videos. The plaintiffs pointed to a "work order" prepared by a custodial supervisor and delivered to a custodial staff member calling for the placement of an opaque piece of plexiglass over the subject window and claimed this created a ministerial duty that defeated the Town's governmental immunity.

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The Appellate Court disagreed, held that the Town was entitled to immunity in all 7 suits, and found:

1. Although entitled a work “order”, the paper completed by the maintenance supervisor indicated that it pertained to general maintenance, the supervisor who completed it was identified as the “requester” and the date it was completed was identified as the “request date”.
2. Although the work order stated "cut and fit colored/textured plexiglass" into the window of the door, it did not state that the staff had no discretion to vary from that.
3. The work order was not a “mandate of legal authority,” given that the maintenance supervisor was not a policy maker for the Town. In so holding the Court emphasized there were several elements that must be met before a finding of ministerial duty is made:
 - a) a ministerial act is one in which a person performs in a given state of facts,
 - b) in a prescribed manner, in obedience to a mandate of legal authority, and
 - c) without regard to or the exercise of his own judgment or discretion upon the propriety of the action being done.

This is a definition of ministerial duty that all involved in public entity defense need to keep handy. We are frequently confronted with claims that a statement by a municipal employee that something *should be done* a certain way constitutes a ministerial act that defeats discretionary act immunity. However, unless that statement can be considered **a mandate of legal authority**, it will not qualify as creating a mandatory duty that defeats immunity. So we need to look at more than the language itself; we need to look at the source of the language. If the statement regarding how something should be done comes from a Board of Education, a Town Council, or a final policy maker, such as a Chief of Police or a Town tree warden or building official, then the statement could be a mandate of legal authority that defeats the immunity. However, a supervisor does not make policy for the Town, so his statement could not be considered a mandate of legal authority.

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Ward v. Town of North Stonington - State & Federal cases

Howd & Ludorf recently won summary judgment for the Town of North Stonington, completing five years of litigation involving alleged violation of federal and state civil rights laws

In Ward v. Town of North Stonington et al. the Plaintiff/operator of a large farm and landscape business sued the Town, the Zoning Commission, the Zoning Board of Appeals and 6 individuals, stemming from a 2016 order by the Town Zoning Enforcement Officer that Ward stop the expansion of his business to include extensive hardscape materials processing and storage, as that activity violated zoning regulations and was not a grandfathered use. The plaintiff appealed the cease and desist order to the Superior Court, which found in favor of the plaintiff, specifically finding the evidence in the record before it did not support the ZEO's claim that the hardscape activities were an expansion of the pre-existing, grandfathered use, and that the order to cease and desist was arbitrary. The plaintiff used this as a springboard to allege civil rights violations against the Defendants, specifically claiming Due Process, Equal Protection and Unconstitutional Takings claims, along with state law violations, and sought over \$2 million in damages.

The Town first argued successfully that it was not collaterally estopped in the federal civil rights litigation from providing additional evidence that the ZEO's conduct was not arbitrary; and then moved for summary judgment on the basis that the Due Process claims failed because the Plaintiff lacked a constitutionally protected property interest, and was given all required notice and opportunity to be heard; further, the Equal Protection claim failed because Plaintiff could not identify comparators who were similarly situated in all material respects who were treated differently that he and his business were; and the Takings claim failed because Plaintiff's property still retained economic value as a farm and landscape business. The Federal Court agreed and granted summary judgment on the federal claims, while remanding the state claims to Superior Court.

The Town then followed with a summary judgment motion on the state law claims of abuse of process, intentional infliction of emotional distress, negligent infliction of emotional distress and negligence, arguing that the Town's compliance with constitutional requirements, along with governmental immunity doctrine, defeated Plaintiffs state law claims as a matter of law. The Superior has now issued its decision granting summary judgment in favor of the Town defendants on the state law claims.

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Beger v. City of Bristol, ___ Conn. App. ___ (2025)

This case involved a fall down at a city transfer station on uneven black top near a ground level recycling bin. Plaintiff sued for negligence and defective highway liability.

As to negligence claim, the city moved for summary judgment based on governmental immunity, given that inspection/maintenance responsibilities involve judgment and discretion, and the plaintiff was not identifiable as being at risk of imminent harm at the time she fell.

The plaintiff attempted to turn this case into a defective highway claim on the theory that the part of the pavement where she fell was technically a driveway that allowed cars to drive immediately adjacent to the ground level receptacles and dispose of their recyclables. The trial court concluded, and the Appellate Court has now affirmed that the fall was not within the ambit of the defective highway act because the area where Plaintiff fell was not open to the indefinite public—the critical fact being that transfer station access was restricted to city residents who held a permit. Here is the important language from the decision:

“[f]or an area to be open to public use it does not have to be open to everybody all the time”; *Cuozzo v. Orange*, supra, 147 Conn. App. 158; it is equally well established that “[t]he essential feature of a public use is that it is *not confined to privileged individuals or groups whose fitness or eligibility is gauged by some predetermined criteria*, but is open to the indefinite public.” *Id.* Because it is undisputed that the transfer station in the present case is, like the transfer station in *Read*, accessible only to City residents who have purchased a permit—that is, to a group whose eligibility is gauged by predetermined criteria—it lacks the “‘essential feature’ ” that would qualify it as open to public use for purposes of § 13a-149.

This is a favorable decision to Connecticut public entities, as the Plaintiffs’ side has sought to expand the reach of the defective act, and the Appellate Court has determined that the defective highway act will not apply to any injury on premises where the right to be there is gauged by a specific criterion, such as needing a permit or pass to enter. The decision allows Connecticut public entities to raise the traditional protections of governmental immunity and be done with the case rather than having to deal with a second theory for a Plaintiffs recovery.

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Hernaiz v. Carlson

This case is centered upon Cromwell Police Officer John Carlson's application for an arrest warrant for Estaban Hernaiz on September 23, 2021 for assault in the third degree and breach of peace in the second degree. These charges arose from an incident that occurred the day before. Officer Carlson responded to the area of Marshals, regarding a report of a female running away from a male individual. Prior to his arrival, Dispatch indicated that she ran towards Shop Rite and the male got into a gray colored Hyundai. Dispatch indicated that the male fled the area in the Cromwell Square parking lot, towards Stop and Shop. Carlson and another officer proceeded into Shop Rite, at which point a Shop Rite employee directed them towards her. She was kneeling behind a cash register and frantically crying. The officers attempted to speak with her, at which point she repeatedly kept looking around and was commenting about a male individual finding her. She made comments indicating that the male may have a gun, that he promised he was going to kill her, and that he would find her. She explained that the male beat her and that she had a lump on her head near her temple. She was breathing rapidly, crying, and shaking. She initially did not want to leave Shop Rite because she was scared that the male would get her. Cromwell Ambulance arrived on scene, at which point she was transported to Middlesex Hospital. Cromwell Ambulance personnel indicated that there was swelling to the left side of her head. Officers proceeded to Middlesex Hospital to continue speaking with her. She was transported to the Middlesex Hospital Emergency Department. Officers inquired with a staff member regarding her condition, and they indicated that she had swelling and "lumps" on the left side of her head, by the area of her temple.

Officer Carlson's applied for an arrest warrant for Estaban Hernaiz on September 23, 2021 for assault in the third degree and breach of peace in the second degree. The arrest warrant was approved by a judge, and Cromwell Officer Ahmed Alassiri arrested Hernaiz. Hernaiz was found guilty on the breach of peace charge on August 11, 2023.

Hernaiz's complaint asserted that the defendants subjected him to false arrest in violation of the Fourth Amendment. We moved for summary judgment on Hernaiz's false arrest claim arguing that he was arrested pursuant to a warrant and was convicted of an offense for which he was arrested. "Under Connecticut law, false arrest and false imprisonment claims require pleading and proof of the same four elements." *Arpino v. Spera*, No. 3:22-CV-01114 (KAD). "The elements of such a claim under Connecticut law are: (1) the defendant arrested plaintiff or had plaintiff arrested; (2) the plaintiff was aware of the arrest; (3) there was no consent for the arrest; and (4) the arrest was not supported by probable cause." *Chase v. Nodine's Smokehouse, Inc.*, 360 F. Supp. 3d 98, 112 (D. Conn. 2019). A plaintiff asserting this claim must also prove that there was a favorable termination of the

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proceedings against him. *Miles v. City of Hartford*, 445 F. App'x 379, 382-83 (2d Cir. 2011). A "favorable termination" means that a plaintiff must show that his "prosecution ended without a conviction." *Thompson v. Clark*, 596 U.S. 36, 39 (2022).

The Court found that Hernaiz's arrest was supported by probable cause, and that he failed to show his prosecution ended without a conviction. First, the judge stated that in the arrest warrant "there is probable cause to believe that an offense has been committed and that the accused committed it and, therefore, that probable cause exists for the issue of a warrant for the arrest of [Hernaiz]." "[I]t is well settled that the issuance of a warrant by a neutral magistrate, which depends on a finding of probable cause, creates a presumption that it was objectively reasonable for the officers to believe that there was probable cause" *Washington v. Napolitano*, 29 F.4th 93, 105 (2d Cir. 2022). "To overcome this presumption, a plaintiff must show that the officers knowingly or recklessly omitted material information from the warrant affidavit." *Id.* The Court concluded that Hernaiz had not provided sufficient facts to create a genuine dispute of material fact. Therefore, the Court concluded that the arrest warrant created a presumption of probable cause, which the plaintiff could not overcome, and thereby precluded his false arrest claim as a matter of law.

The Court also found that even if Hernaiz was able to submit evidence "show[ing] that the officers knowingly or recklessly omitted material information from the warrant affidavit," a plaintiff's conviction for an offense for which he was arrested, in general, conclusively establishes the existence of probable cause for his arrest. *See, e.g., Wingate v. Gives*, 725 F. App'x 32, 35 (2d Cir. 2018). This is true even if the arrest warrant application contained infirmities or was otherwise lacking because "the quantum of proof required for a conviction is higher than that required to establish probable cause." *Winter v. Northrop*, No. CIVA 306-CV-216 PCD (D. Conn. Feb. 12, 2008). The Court noted that it had initially permitted Hernaiz's false arrest claim to proceed because he alleged in his complaint that he was acquitted, but that the defendants supplied evidence contradicting that allegation. State of Connecticut Judicial Branch records showed that Hernaiz was convicted of breach of peace on August 11, 2023, and that he was sentenced to six months in jail on that charge.

Obviously, this was an excellent result for Cromwell and the defendant-officers. It reinforces our defenses on false arrest claims that the issuance of a warrant creates a presumption of probable cause, which is very difficult for a plaintiff to overcome, and that a conviction or guilty plea on ANY charge will defeat false arrest claim regardless of other charges being dismissed or nolle.

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