

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

3
4 August Term, 2017

5
6 (Argued: April 18, 2018 Decided: November 7, 2018)

7
8 Docket No. 17-970-cv

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10 _____
11 DAVID LANNING JR.,

12
13 *Plaintiff-Appellant,*

14
15
16 v.

17
18 CITY OF GLENS FALLS, GLENS FALLS POLICE DEPARTMENT, RYAN ASHE,
19 IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES, COUNTY OF WARREN,
20 WARREN COUNTY SHERIFF'S DEPARTMENT, WARREN COUNTY
21 DISTRICT ATTORNEY'S OFFICE, KEVIN CONINE, JR., IN HIS OFFICIAL AND
22 INDIVIDUAL CAPACITIES,

23
24 *Defendants-Appellees.*

25
26 _____
27 Before:

28
29 KEARSE, CABRANES, and LOHIER, *Circuit Judges.*

30
31
32 David Lanning Jr. brought suit under 42 U.S.C. § 1983 against the City of
33 Glens Falls, the Glens Falls Police Department, Officer Ryan Ashe, the County of
34 Warren, the Warren County Sheriff's Department, the Warren County District
35 Attorney's Office, and Officer Kevin Conine, Jr. He alleged that the Defendants
36 maliciously prosecuted him in violation of the Fourth Amendment and denied
37 him equal protection of the laws in violation of the Fourteenth Amendment. The

1 United States District Court for the Northern District of New York (D'Agostino,
2 L.) granted the Defendants' motions for judgment on the pleadings, holding,
3 among other things, that Lanning failed to plead that the criminal proceedings
4 against him had been terminated in his favor. Concluding that New York State
5 law cannot alter the standard that applies to the "favorable termination" element
6 of a federal constitutional claim of malicious prosecution, which requires the
7 plaintiff to show that the proceedings ended in a manner that affirmatively
8 indicates his innocence, we **AFFIRM**.

9
10 JAMES EDWARD GROSS, Albany, NY, *for*
11 *Plaintiff-Appellant*.

12
13 JAMES A. RESILA (William C. Firth, *on the*
14 *brief*), Carter, Conboy, Case, Blackmore,
15 Maloney & Laird, P.C., Albany, NY, *for*
16 *Defendants-Appellees* City of Glens Falls,
17 Glens Falls Police Department, and Ryan
18 Ashe.

19
20 GREGG T. JOHNSON, Lemire, Johnson &
21 Higgins, LLC, Malta, NY *for Defendants-*
22 *Appellees* County of Warren, Warren
23 County Sheriff's Department, Warren
24 County District Attorney's Office, and
25 Kevin Conine, Jr.

26
27 LOHIER, *Circuit Judge*:

28 This case requires us primarily to consider whether New York law can
29 alter the standard that applies to the "favorable termination" element of a
30 malicious prosecution claim under 42 U.S.C. § 1983. In 2012 law enforcement
31 officials in New York repeatedly arrested and charged David Lanning Jr.

1 (“Lanning”), allegedly at the direction of Lanning’s estranged wife and the Glens
2 Falls police officer with whom she was romantically involved. After the criminal
3 charges against Lanning were dismissed, he filed a § 1983 suit against the City of
4 Glens Falls, the Glens Falls Police Department, and Officer Ryan Ashe
5 (collectively, the “City Defendants”), as well as the County of Warren, the
6 Warren County Sheriff’s Department, the Warren County District Attorney’s
7 Office, and Officer Kevin Conine, Jr. (collectively, the “County Defendants”),
8 claiming malicious prosecution in violation of the Fourth Amendment and denial
9 of the right to equal protection of the laws in violation of the Fourteenth
10 Amendment. The United States District Court for the Northern District of New
11 York (D’Agostino, L.) dismissed Lanning’s complaint on the pleadings.

12 Consistent with the traditional common law of torts, we hold that a
13 plaintiff asserting a malicious prosecution claim under § 1983 must still show
14 that the underlying criminal proceeding ended in a manner that affirmatively
15 indicates his innocence. We **AFFIRM** because Lanning has not plausibly pleaded
16 that the criminal proceedings against him were terminated in a manner that
17 indicates he was innocent of the charges, and because he failed to state a claim
18 under the Equal Protection Clause of the Fourteenth Amendment.

1 **BACKGROUND**

2 “Because this matter comes to us on appeal from a judgment on the
3 pleadings, we rely on the complaint, the answer, any written documents attached
4 to them, and any matter of which [we] can take judicial notice for the factual
5 background of the case.” Roberts v. Babkiewicz, 582 F.3d 418, 419 (2d Cir. 2009).
6 We construe the factual allegations in the light most favorable to Lanning, the
7 losing party. See Latner v. Mount Sinai Health Sys., Inc., 879 F.3d 52, 54 (2d Cir.
8 2018).

9 1. Factual Allegations

10 In 2012 Lanning and his estranged wife, Jamie Lanning, were in the middle
11 of a bitter divorce and child custody dispute. In February 2012 Jamie Lanning
12 began to date Ryan Ashe, a police officer with the Glens Falls Police Department.

13 Shortly after midnight on May 24, 2012, Ashe drove Jamie Lanning to the
14 Warren County Sheriff’s Department Office, where she falsely reported to officer
15 Conine, Ashe’s friend and former police partner, that Lanning had threatened to
16 kill her. Jamie Lanning also reported that Lanning was subject to a pre-existing
17 order of protection in her favor. After taking Jamie Lanning’s statement, Conine
18 drove to Lanning’s home, arrested him, drove him to the Warren County jail,

1 and detained him for about five hours. Later that morning, Lanning was
2 arraigned in Queensbury Town Court on charges of criminal contempt in the
3 first degree (for violating the order of protection) and aggravated harassment in
4 the second degree. The complaint alleged that these charges resulted in a “no
5 contact” order of protection against Lanning. After posting bail, Lanning was
6 released pending a hearing on the charges.

7 On September 18, 2012, Lanning picked up his daughter at his mother-in-
8 law’s house, in keeping with a custody agreement with Jamie Lanning. Ashe
9 and Jamie Lanning arrived at the house in Ashe’s personal car and waited until
10 Lanning drove his daughter to dinner. Ashe and Jamie Lanning then called the
11 Glens Falls Police Department and falsely reported that Lanning had threatened
12 them. When Lanning returned to the house with his daughter, a group of five
13 Glens Falls police officers was waiting. The officers removed Lanning from his
14 car and handcuffed him as Ashe and Jamie Lanning watched from Ashe’s car.
15 That night, the Glens Falls City Court arraigned Lanning on charges of criminal
16 contempt in the first degree. He was kept in the Warren County jail for three
17 days.

1 These charges from the Glens Falls City Court were then merged with the
2 earlier charges from the Queensbury Town Court (stemming from Lanning’s
3 May 24, 2012 arrest) for prosecution in the County Court of Warren County. On
4 September 21, 2012, the Warren County District Attorney’s Office secured an
5 indictment charging Lanning with three counts of criminal contempt in the first
6 degree and one count of aggravated harassment in the second degree. After the
7 indictment, Jamie Lanning allegedly received “[a]nother full order of protection.”
8 App’x 20. In March 2013, on the motion of the Warren County District
9 Attorney’s Office, the County Court reduced and transferred the charges back to
10 the originating courts to be prosecuted separately as misdemeanors.

11 Lanning was then arraigned in Queensbury Town Court on one count of
12 criminal contempt in the second degree and one count of aggravated harassment
13 in the second degree related to the events of May 24, 2012. On May 7, 2014,
14 during the course of a jury trial, the Queensbury Town Court dismissed the
15 charges.¹

¹ The complaint did not specify a basis for this dismissal. However, in their motion to dismiss, Appellees claimed that the dismissal was made “‘in the interests of justice’ based on jurisdictional issue [sic] that arose out of where Plaintiff’s estranged wife was physically located.” Dist. Ct. Dkt. No. 43-7, at 11. Appellees also attached a local news story supporting this account. Dist. Ct. Dkt. No. 43-6, at 4. In his opposing motion and

1 On April 9, 2013, Lanning had been separately arraigned in Glens Falls
2 City Court on two counts of criminal contempt in the second degree related to
3 the events of September 18, 2012. On November 7, 2014, the Glens Falls City
4 Court dismissed these charges “in the interest of justice” pursuant to § 170.40 of
5 the New York Criminal Procedure Law. The complaint alleged that the arrests of
6 which Lanning complains led to his “being subject to numerous orders of
7 protection.” App’x 23.

8 On May 1, 2013, while the criminal charges were pending in Queensbury
9 and Glens Falls, Ashe stopped Lanning’s car and gave him three traffic tickets—
10 one for aggravated unlicensed operation of a motor vehicle, one for changing
11 lanes unsafely, and one for failing to notify the Department of Motor Vehicles of
12 a change in address. All three tickets were dismissed in June 2013.

13 2. Procedural History

14 In February 2016 Lanning sued the City and County Defendants under
15 § 1983, asserting three claims for malicious prosecution in violation of the Fourth
16 Amendment with respect to his two arrests and the traffic stop and one claim for

an accompanying affidavit, Appellant claimed that the charges were dismissed “for lack of legally sufficient evidence presented by the ADA to support the charges *and* lack of jurisdiction,” pursuant to NYCPL § 290.10. Dist. Ct. Dkt. No. 46, at 2; Dist. Ct. Dkt. No. 47, at 13-14.

1 denial of the right to equal protection of the laws in violation of the Fourteenth
2 Amendment.

3 The District Court granted the City and County Defendants’ motions for
4 judgment on the pleadings. Lanning v. City of Glens Falls, No. 1:16-CV-00132,
5 2017 WL 922058, at *9 (N.D.N.Y. Mar. 8, 2017). As relevant to this appeal, the
6 District Court dismissed all of Lanning’s claims against Ashe and Conine in their
7 individual capacities.² With respect to the malicious prosecution claim based on
8 the May 24, 2012 arrest, the District Court held that Lanning failed to rebut the
9 presumption of probable cause established by the indictment and also failed to
10 plead Ashe’s personal involvement in the prosecution. Id. at *3–6. The District
11 Court also held that the criminal proceeding underlying Lanning’s malicious
12 prosecution claim based on the September 18, 2012 arrest was not terminated in
13 Lanning’s favor. Id. at *7. And with respect to the malicious prosecution claim
14 based on Ashe’s May 1, 2013 traffic stop, the District Court determined that
15 Lanning had not adequately alleged a Fourth Amendment “seizure.” Id. The
16 District Court next dismissed Lanning’s equal protection claim because he

² For reasons not relevant to this appeal, the District Court dismissed Lanning’s claims against the Warren County District Attorney’s Office, the Warren County Sheriff’s Department, and the Glens Falls Police Department, as well as Lanning’s claims against Ashe and Conine in their official capacities. See Lanning, 2017 WL 922058, at *3.

1 “failed to plausibly state that similarly situated persons were treated differently”
2 by the City or County Defendants. Id. at *8. Having dismissed the underlying
3 constitutional claims, the District Court also dismissed Lanning’s Monell claims
4 against the municipal defendants. Id. at *9.

5 This appeal followed.

6 **DISCUSSION**

7 Because the District Court dismissed Lanning’s complaint on the
8 pleadings, our review is de novo. See Hayden v. Paterson, 594 F.3d 150, 160 (2d
9 Cir. 2010).

10 1. Malicious Prosecution Claims³

11 To prevail on his § 1983 claims for malicious prosecution, Lanning was
12 required to show “a seizure or other perversion of proper legal procedures
13 implicating [his] personal liberty and privacy interests under the Fourth
14 Amendment.” Washington v. County of Rockland, 373 F.3d 310, 316 (2d Cir.
15 2004) (quotation marks omitted). He also had to show that criminal proceedings
16 were initiated or continued against him, with malice and without probable cause,

³ Lanning’s brief does not challenge the District Court’s dismissal of his third malicious prosecution claim (based on the May 1, 2013 traffic stop). He has therefore abandoned any challenge to the dismissal of that claim. See Morrison v. Johnson, 429 F.3d 48, 52 (2d Cir. 2005).

1 and were terminated in his favor. See Mitchell v. City of New York, 841 F.3d 72,
2 79 (2d Cir. 2016); Swartz v. Insogna, 704 F.3d 105, 111–12 (2d Cir. 2013). We
3 conclude that Lanning failed adequately to allege that his criminal proceedings
4 were terminated in his favor under § 1983.⁴

5 In urging a contrary conclusion, Lanning points to the standard adopted
6 by the New York Court of Appeals for the tort of malicious prosecution. Under
7 that standard, he argues, the favorable termination element is satisfied so long as
8 “the final termination of the criminal proceeding is not inconsistent with the
9 Plaintiff’s innocence.” Appellant Br. 20 (emphasis added) (citing Penree v. City
10 of Utica, 6:13-cv-01323, 2016 WL 915252, at *17 (N.D.N.Y. Mar. 4, 2016)). The
11 County Defendants respond that the underlying criminal proceeding must be
12 terminated “in a manner that is indicative of Plaintiff’s innocence.” County Br.
13 10 (emphasis added). We agree with the County Defendants, and we write to
14 dispel any confusion among district courts about the favorable termination
15 element of a § 1983 malicious prosecution claim.

⁴ The District Court dismissed Lanning’s first malicious prosecution claim against Conine for failure to rebut the applicable presumption of probable cause and against Ashe for failure to plead Ashe’s personal involvement in the prosecution. See Lanning, 2017 WL 922058, at *3–6. But we “may affirm on any grounds for which there is a record sufficient to permit conclusions of law, including grounds no[t] relied upon by the district court.” Mitchell, 841 F.3d at 77 (quotation marks omitted).

1 We have previously stated that claims for malicious prosecution under
2 § 1983 are “substantially the same” as claims for “malicious prosecution under
3 state law.” Jocks v. Tavernier, 316 F.3d 128, 134 (2d Cir. 2003) (quotation marks
4 omitted); see also Fulton v. Robinson, 289 F.3d 188, 195 (2d Cir. 2002) (a plaintiff
5 in a § 1983 malicious prosecution action must “establish the elements of a
6 malicious prosecution claim under state law”); Russell v. Smith, 68 F.3d 33, 36
7 (2d Cir. 1995) (malicious prosecution claims under § 1983 are “governed by state
8 law”). Some district courts in our Circuit have interpreted the language in these
9 cases to mean that they must follow a State’s most recent decisional law to figure
10 out whether a termination is favorable, even with respect to federal claims
11 brought under § 1983.⁵ We now clarify that federal law defines the elements of a
12 § 1983 malicious prosecution claim, and that a State’s tort law serves only as a
13 source of persuasive authority rather than binding precedent in defining these
14 elements. Our prior decisions requiring affirmative indications of innocence to
15 establish “favorable termination” therefore continue to govern § 1983 malicious

⁵ See, e.g., Othman v. City of New York, 13-CV-4771, 2018 WL 1701930, at *13 (E.D.N.Y. Mar. 31, 2018); Myers v. Moore, 13-CV-1006, 2018 WL 1627255, at *13 n.9 (S.D.N.Y. Mar. 30, 2018); Cook v. Dwyer, 1:16-CV-752, 2018 WL 1626126, at *5–6 (N.D.N.Y. Mar. 30, 2018); Buckley v. Niagara Frontier Transp. Auth., 13-CV-1205-RJA-MJR, 2016 WL 8673590, at *4 (W.D.N.Y. July 22, 2016).

1 prosecution claims, regardless of developments in New York State malicious
2 prosecution law.

3 Our view flows directly from the Supreme Court’s decision in Manuel v.
4 City of Joliet, 137 S. Ct. 911 (2017), which dealt in part with the time at which a
5 § 1983 claim for unlawful pretrial detention accrues. There the Supreme Court
6 instructed courts to “look first to the common law of torts” in order to “defin[e]
7 the contours and prerequisites of a § 1983 claim.” Id. at 920; see also Carey v.
8 Piphus, 435 U.S. 247, 257–58 (1978) (common law of torts “provide[s] the
9 appropriate starting point for the inquiry under § 1983”). “Sometimes,” the
10 Court explained, a “review of common law will lead a court to adopt wholesale
11 the rules that would apply in a suit involving the most analogous tort.” Manuel,
12 137 S. Ct. at 920. But common law principles are meant simply “to guide rather
13 than to control the definition of § 1983 claims, serving more as a source of
14 inspired examples rather than of prefabricated components.” Id. at 921
15 (quotation marks omitted); see Rehberg v. Paulk, 566 U.S. 356, 366 (2012)
16 (section 1983 is not “simply a federalized amalgamation of pre-existing common-
17 law claims”). When “applying, selecting among, or adjusting common-law

1 approaches, courts must closely attend to the values and purposes of the
2 constitutional right at issue.” Manuel, 137 S. Ct. at 921.

3 Thus, in Singleton v. City of New York, our seminal decision on § 1983
4 malicious prosecution claims, we did not mechanically apply the law of New
5 York State. Instead, we considered the common law of torts in multiple
6 jurisdictions to determine whether the termination of the underlying criminal
7 charges was favorable to the accused. 632 F.2d 185, 194–95 (2d Cir. 1980); see
8 also San Filippo v. U.S. Tr. Co. of N.Y., 737 F.2d 246, 257 n.6 (2d Cir. 1984)
9 (“[W]here . . . a § 1983 claim is essentially for deprivation of civil rights through
10 malicious prosecution, federal courts will generally look to the common law
11 requirements . . . in judging the merits of the § 1983 claim.” (emphasis added)
12 (citing Singleton, 632 F.2d at 195)). Relying on the Restatement (Second) of Torts,
13 we noted that “[u]nder the common law, . . . it is well-settled that an accused, in
14 order to maintain a cause of action for malicious prosecution, must establish that
15 the state prosecution terminated in his favor,” and that “[p]roceedings are
16 ‘terminated in favor of the accused’ only when their final disposition is such as to
17 indicate the accused is not guilty.” Singleton, 632 F.2d at 193 (emphasis added)
18 (quoting Restatement (Second) of Torts § 660 cmt. a (Am. Law Inst. 1977))

1 (“Restatement”)); see Restatement §§ 658, 660; see also W. Page Keeton et al.,
2 Prosser & Keeton on the Law of Torts § 119, at 874 (5th ed. 1984) (termination is
3 favorable if it “reflect[s] the merits and [is] not merely a procedural victory”).
4 We then considered whether a § 1983 claim for malicious prosecution “may be
5 stated without alleging and proving that the prosecution terminated in some
6 manner indicating that the person was not guilty of the offense charged.”
7 Singleton, 632 F.2d at 194–95. Observing that “[t]he common law rule” had
8 “generally been adopted and applied by federal courts,” and discerning “nothing
9 in the common law which undermines the federal policies fostered by § 1983,”
10 we concluded that “such proof is essential.” Id. at 195. Singleton’s § 1983
11 malicious prosecution claim failed, we held, because his “guilt was left open” by
12 the termination of his criminal charges. Id.

13 In Singleton, we did not think we were bound by New York law on
14 favorable termination. Indeed, we explained there that “state tort law does not
15 define or limit the scope of liability under § 1983.” Id. Rather, we “adopted and
16 applied” the traditional common law of malicious prosecution to the parallel
17 federal constitutional claim brought under § 1983, reasoning that a “prosecution
18 based on probable cause which results in” no indication of innocence “does not

1 deprive the defendant of civil rights within the meaning of § 1983.” Id. In
2 reaching this conclusion, we did not even cite New York State law. Instead, we
3 rested our holding on the precedent of other circuits, and we explained that a
4 contrary holding “would permit a defendant to relitigate the issue of probable
5 cause . . . thus posing the prospect of harassment, waste and endless litigation,
6 contrary to principles of federalism.” Id.

7 It is true that some of our later decisions addressing malicious prosecution
8 claims focused on the malicious prosecution tort devised by relevant States. See,
9 e.g., Dufort v. City of New York, 874 F.3d 338, 350–51 (2d Cir. 2017) (New York);
10 Roberts, 582 F.3d at 420–22 (Connecticut); Hygh v. Jacobs, 961 F.2d 359, 367–68
11 (2d Cir. 1992) (New York). But in none of these decisions did we hold that a
12 change in any particular State’s law automatically effects a change in the
13 requirement for a federal malicious prosecution claim. To the contrary, we relied
14 on a specific State’s law only insofar as it reflected traditional common law
15 principles as well as federal constitutional principles. See Fulton, 289 F.3d at
16 195–96; Murphy v. Lynn, 118 F.3d 938, 948–50 (2d Cir. 1997).

17 And until the early 2000s, New York courts adhered to these traditional
18 common law principles relating to the favorable termination element of a claim

1 of malicious prosecution. See, e.g., MacFawn v. Kresler, 88 N.Y.2d 859, 860
2 (1996) (“A criminal proceeding terminates favorably to the accused, for purposes
3 of a malicious prosecution claim, when the final disposition of the proceeding
4 involves the merits and indicates the accused’s innocence.”); Ward v. Silverberg,
5 85 N.Y.2d 993, 994 (1995); Hollender v. Trump Vill. Coop., Inc., 58 N.Y.2d 420,
6 425–26 (1983); see also DiBlasio v. City of New York, 102 F.3d 654, 657 (2d Cir.
7 1996) (observing that the New York Court of Appeals used the Restatement to
8 define “favorable termination”). Our references to New York court decisions to
9 guide our analysis of the favorable termination element therefore made sense.

10 In 2000, however, the New York Court of Appeals, in Smith-Hunter v.
11 Harvey (a case involving dismissal for violation of the defendant’s right to a
12 speedy trial), for the first time characterized the favorable termination language
13 in its prior cases as dicta; it simultaneously “reject[ed] the notion” that a plaintiff
14 asserting a State tort claim for malicious prosecution, at least under the
15 “particular circumstances” presented in that case, “must demonstrate innocence
16 in order to satisfy the favorable termination prong.” 95 N.Y.2d 191, 199 (2000).⁶

⁶ Smith-Hunter, in holding that the dismissal of a prosecution on speedy trial grounds is a favorable termination although neutral with respect to guilt or innocence, still reflects the traditional common law. See Restatement § 660 cmt. d (principle that abandonment

1 In 2001, in Cantalino v. Danner, 96 N.Y.2d 391 (2001), the Court of Appeals
2 appeared to go further. In Cantalino, the Court of Appeals characterized Smith-
3 Hunter as holding that “any termination of a criminal prosecution, such that the
4 criminal charges may not be brought again, qualifies as a favorable termination,
5 so long as the circumstances surrounding the termination are not inconsistent
6 with the innocence of the accused,” 96 N.Y.2d at 395 (emphasis added). The
7 “rule announced in Smith-Hunter,” the Court of Appeals explained, “is one of
8 general application,” id. at 397. The termination in Cantalino involved a
9 dismissal in the interest of justice under § 170.40 of the New York Criminal
10 Procedure Law. Such a dismissal, the Court of Appeals concluded, can count as
11 a favorable termination where the trial court’s reasons for dismissing the charges
12 are “not inconsistent with . . . innocence.” Id. at 395. With that, Cantalino
13 appeared to deviate⁷ (as State courts are entitled to do with regard to claims
14 under State law) from the traditional common law of torts, which, as reflected in
15 the Restatement, requires that a favorable termination affirmatively indicate the

of a prosecution following certain types of misconduct by the accused is not a favorable termination does “[n]ot include[]” terminations due to “claims of constitutional or other privilege”); see also Murphy, 118 F.3d at 949–50.

⁷ We need not and do not decide whether or not Cantalino in fact is consistent with or deviates from the traditional “indicates innocence” standard.

1 innocence of the accused. See Restatement § 660 cmt. a (criminal “[p]roceedings
2 are ‘terminated in favor of the accused’ . . . only when their final disposition is
3 such as to indicate the innocence of the accused”).

4 Of course, for malicious prosecution claims brought under New York law,
5 federal courts must faithfully apply New York tort law. See Mullaney v. Wilbur,
6 421 U.S. 684, 691 & n.11 (1975); see also Stampf v. Long Island R.R., 761 F.3d 192,
7 196, 200–01 (2d Cir. 2014). But we are not bound to apply New York law to
8 malicious prosecution claims arising under § 1983; indeed, even though
9 Cantolino was decided nearly twenty years ago, this Court has never applied its
10 “favorable termination” standard to a § 1983 claim. See, e.g., Gonzalez v. City of
11 Schenectady, 728 F.3d 149, 162 (2d Cir. 2013); Fulton, 289 F.3d at 196.

12 In arriving at the conclusion that we are not bound to apply New York law
13 in this case, we recall “the values and purposes of the [federal] constitutional
14 right at issue.” Manuel, 137 S. Ct. at 921. A § 1983 claim for malicious
15 prosecution essentially alleges a violation of the plaintiff’s right under the Fourth
16 Amendment to be free from unreasonable seizure. Swartz, 704 F.3d at 112. “The
17 touchstone of the Fourth Amendment is reasonableness,” Florida v. Jimeno, 500
18 U.S. 248, 250 (1991); see United States v. Lambus, 897 F.3d 368, 402 (2d Cir. 2018),

1 which “is measured in objective terms by examining the totality of the
2 circumstances,” Ohio v. Robinette, 519 U.S. 33, 39 (1996). When a person has
3 been arrested and indicted, absent an affirmative indication that the person is
4 innocent of the offense charged, the government’s failure to proceed does not
5 necessarily “impl[y] a lack of reasonable grounds for the prosecution.” Conway
6 v. Village of Mount Kisco, 750 F.2d 205, 215 (2d Cir. 1984).

7 Turning to the allegations in this case, we conclude that Lanning did not
8 adequately plead that the termination of the prosecutions against him
9 affirmatively indicated his innocence. With respect to the prosecution following
10 his May 24, 2012 arrest, Lanning alleged that the charges against him “were
11 dismissed” at some point after a jury trial, without specifying how or on what
12 grounds. App’x 22, 25. This vague allegation is consistent with dismissal on any
13 number of procedural or jurisdictional grounds, all of which fail to affirmatively
14 indicate innocence. Nor does Lanning’s attempt to narrow his initial pleading,
15 Dist. Ct. Dkt. No. 46, at 2; Dist. Ct. Dkt. No. 47, at 13-14, help him. First, on
16 appeals from judgments on the pleadings, we rely only on “the complaint, the
17 answer, any written documents attached to them, and any matter of which the
18 court can take judicial notice.” Roberts, 582 F.3d at 419. And second, Lanning

1 himself agrees that these dismissals were based, at least in part, on “lack of
2 jurisdiction.” Dist. Ct. Dkt. No. 46, at 2; Dist. Ct. Dkt. No. 47, at 13-14.

3 Similarly, none of the reasons the Glens Falls City Court stated on the
4 record for dismissing the charges arising from Lanning’s September 18, 2012
5 arrest indicate Lanning’s innocence. To the contrary, the City Court stated
6 (quoting the New York Court of Appeals) that the dismissal of those charges in
7 the interest of justice was “neither an acquittal of the charges nor any
8 determination of the merits,” but rather “le[ft] a question of guilt or innocence
9 unanswered.” App’x 62–63. As we have explained in discussing “the
10 constitutional tort of malicious prosecution in an action pursuant to § 1983,”
11 where a dismissal in the interest of justice “leaves the question of guilt or
12 innocence unanswered[,] . . . it cannot provide the favorable termination required
13 as the basis for [that] claim.” Hygh, 961 F.2d at 367–68.

14 Lanning has not plausibly alleged that any of the criminal proceedings
15 against him were terminated in a manner indicating his innocence. We therefore
16 conclude that Lanning failed to plead a viable § 1983 claim for malicious
17 prosecution, and we affirm the District Court’s judgments dismissing his
18 malicious prosecution claims.

1 2. Equal Protection Claim

2 In addition to his claims of malicious prosecution, Lanning alleged that the
3 City and County Defendants, prompted by Jamie Lanning’s relationship with
4 Ashe, violated the Equal Protection Clause of the Fourteenth Amendment by
5 selectively arresting and prosecuting him. The District Court dismissed this
6 claim on the ground that Lanning had failed adequately to allege the existence of
7 an appropriate comparator. We agree.

8 The Equal Protection Clause “is essentially a direction that all persons
9 similarly situated should be treated alike.” City of Cleburne v. Cleburne Living
10 Ctr., Inc., 473 U.S. 432, 439 (1985). Although “equal protection jurisprudence has
11 typically been concerned with governmental classifications that affect some
12 groups of citizens differently than others. . . [.] an equal protection claim can in
13 some circumstances be sustained even if the plaintiff has not alleged class-based
14 discrimination, but instead claims that she has been irrationally singled out.”
15 Engquist v. Oregon Dep’t of Agr., 553 U.S. 591, 601 (2008) (internal quotation
16 marks and citations omitted); see also Harlen Assocs. v. Incorporated Village of
17 Mineola, 273 F.3d 494, 499 (2d Cir. 2001) (“Although the prototypical equal
18 protection claim involves discrimination against people based on their

1 membership in a vulnerable class, we have long recognized that the equal
2 protection guarantee also extends to individuals who allege no specific class
3 membership but are nonetheless subjected to invidious discrimination at the
4 hands of government officials.”). To state an equal protection claim based on a
5 theory of selective enforcement, a plaintiff must plausibly allege, among other
6 things, that he was treated differently from other similarly situated individuals.⁸
7 Id. at 499.

8 Lanning’s complaint conclusorily asserted that the Defendants
9 “intentionally treated [him] differently from others in a similar situation, that
10 situation being the Warren County Sheriff’s Department and the Glens Falls
11 Police Department responding to reports of potential criminal activity.” App’x
12 29. But Lanning concedes that he failed to allege any examples of other
13 individuals against whom reports of criminal activity were made, Oral Arg. Tr.
14 5:12–6:6, let alone other individuals accused of similar conduct, see Ruston v.

⁸ Lanning’s briefs characterize his equal protection claim as one based on the “selective enforcement” theory we articulated in LeClair v. Saunders, 627 F.2d 606, 609–10 (2d Cir. 1980). Appellant Br. 21–22. At oral argument, by contrast, counsel for Lanning characterized his equal protection claim as one based on the “class of one” theory articulated in Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Even if we were to construe Lanning’s claim as a “class of one” claim, he must still plausibly allege the existence of a similarly situated comparator. See Progressive Credit Union v. City of New York, 889 F.3d 40, 49 (2d Cir. 2018).

1 Town Bd. for Skaneateles, 610 F.3d 55, 58–59 (2d Cir. 2010). As “[t]hreadbare
2 recitals of the elements of a cause of action, supported by mere conclusory
3 statements, do not suffice” to state a claim on which relief can be granted,
4 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), we affirm the District Court’s dismissal
5 of Lanning’s equal protection claim.

6 3. Monell Claims

7 Because Lanning has not plausibly alleged an underlying constitutional
8 violation, his Monell claims against the municipal defendants necessarily fail.
9 See Askins v. Doe No. 1, 727 F.3d 248, 253 (2d Cir. 2013).

10 **CONCLUSION**

11 We have considered Lanning’s remaining arguments and conclude that
12 they are without merit. For the foregoing reasons, the judgment of the District
13 Court is **AFFIRMED**.