

**Schaller v County of Suffolk**

2008 NY Slip Op 31699(U)

June 17, 2008

Supreme Court, Suffolk County

Docket Number: 0012349/2005

Judge: John J.J. Jones

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 - SUFFOLK COUNTY

**P R E S E N T :**

Hon. JOHN J.J. JONES, JR.  
Justice of the Supreme Court

MOTION DATE 12-15-07  
ADJ. DATE 2-29-08  
Mot. Seq. # 004 - MG; CASEDISP  
# 005 - MG; CASEDISP  
# 006 - XMD

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RICHARD J. SCHALLER,	:	STOCK & CARR
	:	Attorneys for Plaintiff
Plaintiff,	:	88 Second Street
	:	Mineola, New York 11501
- against -	:	
	:	CHRISTINE MALAFI, ESQ., Suffolk Cty Attorney
COUNTY OF SUFFOLK, THE SUFFOLK	:	By: Marcia L. Lynn, Esq.
COUNTY SHERIFF'S DEPARTMENT, "JOHN	:	Attorneys for the Defendants County of Suffolk,
DOE", Deputy Sheriff, individually and as a	:	The Suffolk County Sheriff's Department & The
Sheriff attached to the SUFFOLK COUNTY	:	Suffolk County Police Department
SHERIFF'S DEPARTMENT (name being	:	H. Lee Dennison Building
fictitious), the SUFFOLK COUNTY POLICE	:	100 Veterans Memorial Hwy, P.O. Box 6100
DEPARTMENT, "JANE DOE" and "JOHN	:	Hauppauge, New York 11788-0099
SMITH", Police Officers, individually and as police	:	
officers attached to the SUFFOLK COUNTY	:	GORDON & SILBER, P.C.
POLICE DEPARTMENT (name being fictitious),	:	Attorneys for Defendants James & Lauren Kilmeade
JAMES KILMEADE and LAUREN KILMEADE,	:	355 Lexington Avenue, 7 <sup>th</sup> Floor
	:	New York, New York 10017-6603
Defendants.	:	

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Upon the following papers numbered 1 to 30 read on these motions for summary judgment and cross motion to amend caption; Notice of Motion/ Order to Show Cause and supporting papers 1 - 9; 10 - 22; Notice of Cross Motion and supporting papers 23 - 25; Answering Affidavits and supporting papers 26 - 27; Replying Affidavits and supporting papers 28; 29; Other 30; (~~and after hearing counsel in support and opposed to the motion~~) it is,

**ORDERED** that for the purposes of this determination, the motion made by defendants the County of Suffolk, the Suffolk County Sheriff's Department and the Suffolk County Police Department (Mot. Seq. #004), the motion by defendants James Kilmeade and Lauren Kilmeade (Mot. Seq. #005), and the cross motion by plaintiff Richard J. Schaller (Mot. Seq. #006) are consolidated; and it is further

**ORDERED** that this motion by defendants the County of Suffolk, the Suffolk County Sheriff's Department and the Suffolk County Police Department for summary judgment dismissing the complaint against them is granted; and it is further

**ORDERED** that the motion by defendants James Kilmeade and Lauren Kilmeade for summary judgment dismissing the complaint and all cross claims against them is granted; and it is further

**ORDERED** that the cross motion by plaintiff Richard J. Schaller for an order amending the caption to substitute “Police Officer Rita Engels” and “Police Officer David Dugo” in the place and stead of “Jane Doe” and “John Smith” is denied.

Plaintiff Richard J. Schaller, who is hearing impaired and able to read lips, was a tenant living in a basement apartment in the home of defendants James and Lauren Kilmeade pursuant to a lease executed on April 15, 2001. On August 17, 2004, a dispute arose between the plaintiff and Lauren Kilmeade whereupon the Suffolk County Police were called. After Police Officer David Dugo and Police Officer Rita Engels, along with the plaintiff and the Kilmeades entered the plaintiff’s apartment, an altercation occurred. As a result, the plaintiff was handcuffed and taken to the psychiatric ward of Stony Brook Hospital. The plaintiff was released from the hospital after approximately eight hours. The next day, the plaintiff was served with eviction papers which eventually led to his leaving the apartment on September 13, 2004.

The plaintiff commenced this action against the County of Suffolk, the Suffolk County Sheriff’s Department, “John Doe” Deputy Sheriff, individually and as a Sheriff attached to the Suffolk County Sheriff’s Department (name being fictitious), the Suffolk County Police Department, “Jane Doe” and “John Smith” Police Officers individually and as Police Officers attached to the Suffolk County Police Department (names being fictitious) [hereinafter all collectively referred to as the “County”], James Kilmeade and Lauren Kilmeade. The complaint alleges ten causes of action: the First, is for assault and battery against James Kilmeade; the Second, is for trespass against James and Lauren Kilmeade; the Third, is for illegal eviction and breach of lease against James and Lauren Kilmeade; the Fourth, is for violation of the “American with Disabilities Act” against James and Lauren Kilmeade; the Fifth, is for assault and battery against the County; the Sixth, is for false arrest and imprisonment against the County; the Seventh, is for negligence against the County; the Eighth, is for violation of constitutional rights against the County; the Ninth, is for negligent infliction of emotional distress against the County, and James and Lauren Kilmeade; and the Tenth, is for punitive damages against the County, and James and Lauren Kilmeade.

The Kilmeades now move for summary judgment dismissing the complaint and any and all cross claims. In support thereof they submit, *inter alia*: a copy of the pleadings; their deposition testimony; the deposition testimony of the plaintiff; the deposition testimony of Suffolk County Police Officers Rita Engels and David Dugo; and a copy of the lease. The County also moves for summary judgment dismissing the complaint and submits in support, *inter alia*, a copy of the pleadings and the deposition testimony of Suffolk County Police Officers Rita Engels and David Dugo. The plaintiff opposes these motions and cross-moves to amend the caption to substitute “Police Officer Rita Engel” and “Police Officer David Dugo” in the place and stead of “Jane Doe” and “John Smith.”

James Kilmeade testified at his deposition that on August 17, 2004, his wife called him at work and was in a panic because the plaintiff had been very confrontational and had been screaming at her, whereupon Mr. Kilmeade suggested that she call the police. Mr. Kilmeade stated that he thereafter went home and when the police arrived at his house, he explained to the officers that the plaintiff was deaf; that

the plaintiff was a tenant; that over the previous months, the plaintiff had become abusive and harassing; that it had escalated to the point where he and his wife did not feel safe in the house anymore; and that the plaintiff had denied them access to the apartment. Mr. Kilmeade further explained that they were going to put their house on the market and wanted to get into the apartment to see if electrical and plumbing work was needed. Mr. Kilmeade testified that prior to August 17, 2004, the plaintiff had threatened his wife, screaming at her and his children, wedging his body between the door, touching her arm, and refusing to leave their foyer.

In addition, Mr. Kilmeade testified in pertinent part that after the police officers spoke to him and his wife and then spoke to the plaintiff, they eventually all went into the apartment with plaintiff's permission. Mr. Kilmeade stated that the plaintiff had to unlock multiple locks and unscrew multiple screws with a screwdriver in order to open the door. He also testified to the effect that: the plaintiff had created walls in the apartment without their permission; it was dark and "like a rat's" maze; they were led down the hallway by the police officer's flash light; and they were all very close to one another. Mr. Kilmeade stated that there was a door that was rigged in some kind of way and when one of the police officers asked the plaintiff to open the door, his wife pointed to something and the plaintiff lunged at his wife with a screwdriver. He alleged that he then stepped between the plaintiff and his wife, and before anything could happen, one of the police officers grabbed the plaintiff to restrain him and the police officer fell backward with the plaintiff into the kitchen area.

Lauren Kilmeade testified at her deposition that in April, 2004, she went to the plaintiff's apartment to speak to him and upon entering the apartment, she was shocked to see the condition of the apartment since it was very dark with all the light being blocked; it was dirty; it smelled; and the plaintiff had moved his bed into the kitchen. She testified that she and the plaintiff got into an argument over the condition of the apartment. Mrs. Kilmeade stated that another time, after the April argument, the plaintiff came to her door and was yelling and trying to push the door in, frightening her children. She alleged that on June 26, 2004, the plaintiff wrote her a letter of apology for scaring her children. She also alleged that several times thereafter she asked him about the rent money and the plaintiff became irate.

Additionally, Mrs. Kilmeade testified that on August 17, 2004, the plumber was at her house working on a downstairs bathroom and needed access to the apartment. She stated that she did not recall the exact series of events but that she called her husband and she called the police. She alleged her husband arrived home and after the police arrived, they walked out with the police to go into the apartment. Mrs. Kilmeade testified in pertinent part that the police asked the plaintiff if he would open the door because the Kilmeades needed to gain access, and the plaintiff reluctantly agreed. She noted that the plaintiff had a kind of system when opening the exterior door, by picking at the molding and looking for a piece of paper which would let him know if someone had broken into the apartment. She testified that she, her husband, the plaintiff, and the two police officers then entered the apartment, and that they had to walk in a single line because it was a narrow alleyway. In addition, she explained that everything was bolted and the plaintiff had an intricate locking system using a screwdriver on all the doors. Mrs. Kilmeade testified that since she needed access to a storage room, the police asked the plaintiff to open an interior door. She further alleged that at this request by the police, the plaintiff became very agitated and he lunged at her with the screwdriver. She testified that her husband tried to protect her and the police tried to restrain the plaintiff who was out of control. She stated that the police let the plaintiff calm down, and then the police left and were going to take the plaintiff to a psychiatric unit. Finally, Mrs. Kilmeade

testified that after the police and the plaintiff left, she and her husband re-entered the apartment because the plumber was still there and needed access.

Police Officer David Dugo testified at his deposition that he was dispatched to the Kilmeades' home on August 17, 2004, due to a landlord/tenant dispute. He alleged that he spoke to the plaintiff and the plaintiff explained to him that he was involved in a possible eviction proceeding. He stated that although he was led to believe that the plaintiff had some type of hearing impairment, the plaintiff's words were clear and distinguishable. Police Officer Dugo stated that he also spoke to the Kilmeades and Mrs. Kilmeade expressed concern over the plaintiff's violent behavior. He stated that the Kilmeades wanted to gain entry to look around the apartment, and when he explained that to the plaintiff, the plaintiff agreed to let them in.

Police Officer Dugo additionally testified that when they entered the apartment it was dark and he observed a narrow hallway. He testified that the Kilmeades wanted to look into a certain area to the left of the wall, and when someone was about to enter the area, the plaintiff became agitated. At some point after entering the apartment, Police Officer Dugo took the screwdriver out of the plaintiff's hand. He described the plaintiff as flailing his arms, and yelling, "No. They'll contaminate it with their eyes." Police Officer Dugo stated that the plaintiff then lunged toward Mrs. Kilmeade. He explained, "When I say lunged, he specifically had his hands out and it was clear at that point he was about to attack someone." Police Officer Dugo testified that he grabbed onto the plaintiff, fell down with the plaintiff, whereupon the plaintiff got up and ran toward the Kilmeades and the other police officer. Police Officer Dugo stated that he got up and followed the plaintiff, who appeared to be in a scuffle of some sort although he could not tell with whom as there was no illumination. He alleged that he attempted to control the plaintiff by trying to hold onto his hands, but that the plaintiff was trying to break his grip. He testified that with the help of the other police officer, they were able to control the plaintiff and put handcuffs on him. He also testified that a third police officer arrived sometime thereafter and the plaintiff was taken to the Stony Brook psychiatric unit. Lastly, Police Officer Dugo testified that the plaintiff was not arrested.

At her deposition, Police Officer Rita Engels testified to the effect that when she arrived at the Kilmeades' residence, Officer Dugo, the Kilmeades and the plaintiff were standing at the plaintiff's door. She testified that she believes Mrs. Kilmeade told her that they needed access to the apartment and that Mr. Kilmeade expressed concern for his wife's safety because the plaintiff had threatened her in some way. Officer Engels stated that the plaintiff seemed comfortable and consented to let them into the apartment. She testified that there was a narrow hallway with a lot of doors with no door knobs. She explained that the doors had shoelaces with a lot of knots tied into the shoelaces. She further explained that the plaintiff had a piece of paper with notes and diagrams written on it as to how to untie the shoelaces in order to open the doors. Officer Engel testified that since she was closest to the door of a room which the Kilmeades needed to see, she reached for the shoelace to untie it, whereupon the plaintiff became agitated, violent, and was yelling, screaming, and flailing his arms. She alleged that the plaintiff lunged at her but could not reach her because the hall was so narrow and they were all in single file. She remembered that Officer Dugo tried to restrain him and they both fell. Officer Engel concluded that at some point the plaintiff was back at the door and they handcuffed him.

At his deposition, the plaintiff testified that he signed the lease to the Kilmeades' apartment in

April, 2001, and that he did not feel safe when he moved in because one of the doors could not be locked. He testified in pertinent part that he put up makeshift walls in the apartment since there was one open room, that he had to put up these walls to protect himself, and that he did not ask the Kilmeades' permission. The plaintiff testified to the effect that he did not want anyone coming into the apartment when he was not there, so he drilled a tiny hole in the door, and rigged it with a wooden toothpick, glue and cloth, so that he could tell if someone had entered. He explained that he studied the toothpick for a minute or two every time he came home. The plaintiff testified that in May, 2004, the Kilmeades sent him a letter telling him that he had to find another place to live as they were moving, and that he did not have to pay rent that month. The plaintiff alleged that in response, he told the Kilmeades that he wanted his security deposit back, whereupon Mrs. Kilmeade told him that he had used up his deposit. The plaintiff alleged that he only owed the Kilmeades \$495. He also acknowledged that after the May letter he never paid any further rent to the Kilmeades.

In addition, the plaintiff testified that on August 17, 2004, after he arrived home from shopping, Mrs. Kilmeade met him at his car and demanded a check. He alleged that he again told Mrs. Kilmeade that he wanted his deposit back. He further alleged that she stated she was going to throw all of his things out of the apartment if he did not pay. He stated that he responded by saying, "don't you dare touch my stuff." The plaintiff testified to the effect that Mrs. Kilmeade ran away from him, and about ten minutes later Mr. Kilmeade came home and was very angry. He alleges that he was seated in his car with the window partially down, when Mr. Kilmeade came over and was talking to him with an "ugly face." He testified that he made an ugly face back at Mr. Kilmeade and that Mr. Kilmeade then slammed the car door, which had been open about two inches. He alleged that the glass touched his jaw but it did not hurt him.

The plaintiff further testified that thereafter, a police or a sheriff's car arrived, and he told the officer that he was deaf. He alleges that the police officer<sup>1</sup> went inside the Kilmeades house, and after several minutes came out and asked him if he had something to hide. He testified to the effect that, at this point, he thought that the landlords were trying to pin something on him, so that he asked for an interpreter, but the officer refused. The plaintiff alleged that about this time a female police officer also arrived. Additionally, the plaintiff claimed that the male police officer told him to open his apartment door and he did what he was told. He testified that they went into the apartment and the male police officer politely took the screwdriver out of his hand. He stated that the female police officer then went to open a door that was tied with a shoelace. He alleged that he wanted to look at the shoelace, but the officer started to untie the lace before he could see it. The plaintiff explained that: he studied the knots; he would memorize how he had made the knots; he needed to know how a knot was tied to make sure no one was there; and he was deprived of looking at the knots because Mr. Kilmeade was ahead of him, apparently blocking his view. The plaintiff alleged that he leaned and moved forward and that he may have touched Mr. Kilmeade in trying to get to the door. He alleged that when the male police officer grabbed him and tried to put handcuffs on him, he tried to turn around to read his lips, and that the officer probably took that as aggression. The plaintiff stated that when they put him in the police car, he asked

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<sup>1</sup>Although the plaintiff was not certain whether the law enforcement officer who first arrived was a police officer or a sheriff, the court will refer to such law enforcement officer as a police officer based upon the record.

for a lawyer but was told that they were not arresting him. Lastly, he testified to the effect that while he was at the hospital the Kilmeades did maintenance work on a pipe and that someone tampered with his property. When asked if anything was damaged, the plaintiff responded, "I wouldn't know. It could be x-ray damage, they [sic] could be magnet damage."

The court will determine the summary judgment motions by addressing each cause of action along with the pertinent evidence.

As to the First cause of action against James Kilmeade, the complaint alleges that Mr. Kilmeade entered the plaintiff's apartment on August 17, 2004, and intentionally committed assault and battery upon the plaintiff. To sustain a cause of action to recover damages for an assault, there must be evidence of the defendant's physical conduct which placed the plaintiff in imminent apprehension of harmful contact (*Cotter v Summit Security Services, Inc.*, 14 AD3d 475, 788 NYS2d 153 [2005]). To recover damages for a battery, there must be evidence showing that there was bodily contact, that the contact was offensive, and that the defendant intended to make the contact without the plaintiff's consent (*Bastein v Sotto*, 299 AD2d 432, 749 NYS2d 538 [2002]). As to any activity in the apartment, it is clear from the plaintiff's own testimony that he was the aggressor and surged forward coming in contact with Mr. Kilmeade. Moreover, any action taken by Mr. Kilmeade in the hallway was either in self-defense or in defense of his wife or Police Officer Engels and thus justified (*see, Scribner v Beach*, 4 Denio 448 [1847]).

In opposition to this summary judgment motion, the plaintiff raises for the first time his deposition testimony wherein he stated that Mr. Kilmeade slammed the car door shut hitting his jaw. Although Mr. Kilmeade's actions were arguably discourteous, since the plaintiff sat there making faces at Mr. Kilmeade, there was obviously no "imminent apprehension" of harmful contact, and thus no assault (*see, Hayes v Schultz*, 150 AD2d 522, 541 NYS2d 115 [1989]). Further, even if Mr. Kilmeade slammed the door as claimed, there has been no showing that he intended to make contact with the plaintiff, and thus no proof of a battery (*see, Bierach v Nichols*, 248 AD2d 916, 669 NYS2d 988 [1998]). Accordingly, the Mr. Kilmeade's motion for summary judgment dismissing the First cause of action is granted.

As to the Second cause of action against James and Lauren Kilmeade, the complaint alleges that on August 17, 2004, the Kilmeades without legal right and without consent entered into the plaintiff's property. The essence of a cause of action for trespass is the invasion of an individual's interest in the exclusive possession of land (*Kaplan v Incorporated Village of Lynbrook*, 12 AD3d 410, 784 NYS2d 586 [2004]). In general, in the absence of a reservation in the lease, a tenant has the sole and exclusive right to the occupation and control of the leased premises during his term, and a landlord has no right to enter the premises (*Zwerin v Geiss*, 38 Misc2d 306, 237 NYS2d 280 [1963]). However, a provision in a lease giving a landlord the right to enter the leased premises in order to make repairs may grant an absolute right of entry (74 *NY Jur.2d*, Landlord and Tenant §247). In this case, paragraph 10 of the lease provides, "Landlord may at reasonable times, enter the Apartment to examine, to make repairs or alterations, and to show it to possible buyers, lenders or tenants." Under the circumstances herein, it is clear that the Kilmeades had the right to enter the plaintiff's apartment to inspect it and to make repairs (*see, St. Joseph's Immigrant Homes, Inc. v Seaman*, 53 Misc2d 1095, 281 NYS2d 143 [1967]). The entry was for the purpose of examining and making repairs to the plumbing, a right reserved in the lease, and to which the plaintiff consented (*see, Ernst v Strauss*, 114 AD 19, 99 NYS 597 [1906]; *see also Koltz v 97 Columbia Heights Realty Corp.*, 6 Misc2d 840, 161 NYS2d 770 [1957]). Therefore, the Kilmeades'

motion for summary judgment dismissing the Second cause of action is granted.

As to the Third cause of action against James and Lauren Kilmeade, the complaint alleges that the Kilmeades commenced an unlawful eviction proceeding against the plaintiff and violated the lease agreement. In support of their summary judgment motion, the Kilmeades allege that they commenced a legal proceeding in Suffolk County District Court to evict the plaintiff for non-payment of rent, which resulted in a judgment in their favor and a warrant of eviction was issued against the plaintiff. They contend that the plaintiff was ordered to leave the apartment by September 12, 2004, and the plaintiff's deposition testimony indicates that he agreed in court to leave on such date. Additionally, James Kilmeade testified that when they rented the apartment to the plaintiff, the apartment was in perfect shape, immaculate, with brand-new rugs and all the doors working. Based upon such proof, the court finds that the Kilmeades have made a prima facie showing that the eviction was legal and that they did not breach the lease.

In opposition, the plaintiff simply alleges that there are questions of fact concerning the condition of the apartment and the payment of rent, which are too numerous and lengthy to repeat. However, a review of the record indicates that the only complaint the plaintiff had with the apartment, that was not addressed by the Kilmeades, concerned a broken lock on one of the interior doors which the plaintiff himself fixed. The court also notes that the plaintiff acknowledged during his deposition that he did not always pay his rent on time, he owed the Kilmeades money, he put up walls without the Kilmeades' permission and he put holes in the doors. As such, the plaintiff has failed to rebut defendants' prima facie showing. Accordingly, the Kilmeades' motion for summary judgment dismissing the Third cause of action is granted.

As to the Fourth cause of action against James and Lauren Kilmeade, the complaint alleges that the Kilmeades violated United States Code, Article 42 (commonly referred to as the "Americans with Disabilities Act"[and hereinafter referred to as "ADA"]). "To state a claim for discrimination under the ADA, a plaintiff must allege (1) that he is a qualified individual with a disability; (2) that the defendant is subject to the ADA; and (3) that the plaintiff was denied the opportunity to participate in or benefit from defendants services, programs, or activities, or was otherwise discriminated against by defendants, by reason of [his] disability... The public accommodation provision of the ADA prohibits discrimination against any individual on the basis of disability 'by any person who owns, leases (or leases to), or operates a place of public accommodation' 42 USC §12182" (*Reid v Zackenbaum*, 2005 U.S. Dist. LEXIS 17177, 2005 WL 1993394 [internal citation and quotation marks omitted]). A residential facility such as an apartment in a private home, is not a public accommodation under the provisions of the ADA (*Reid v Zackenbaum, supra*). Thus, the plaintiff's apartment in the Kilmeades' home is not a place of public accommodation, and the ADA is not applicable (*see, New York Practice Series- Landlord and Tenant Practice in New York* §5:61). Furthermore, relief in the form of monetary damages, which is the relief requested by plaintiff herein, is not permitted when the claim is based on violations of the ADA (*see, Charnoff v Baldwin Realty Group, Inc.*, 8 Misc3d 1023A, 803 NYS2d 17 [2005]). Therefore, the Kilmeades' motion for summary judgment dismissing the Fourth cause of action is granted.

As to the Fifth cause of action against the County, the complaint alleges that the County's police officers, while in the course and scope of their employment, perpetrated an assault and battery, by placing the plaintiff in handcuffs, and using unnecessary and excessive force. Initially, the court notes that

although the plaintiff has named the police officers individually in the caption of the complaint, this cause of action, as well as the other causes of action against the County, all allege that the individual police officers were acting within the scope of their duties or in their official capacity. In addition, the plaintiff, in his memorandum of law, acknowledges that the police officers “were acting within the scope of their official duties.” As such, the court deems these causes of action to be equivalent to causes of action against the County (*see, Rosen & Bardunias v County of Westchester*, 228 AD2d 487, 644 NYS2d 320 [1996]) and not against the police officers individually.

Even if a police officer is in the lawful scope of his or her duties, the use of excessive force would be a legal basis for finding an assault (*Stein v State of New York*, 53 AD2d 988, 385 NYS2d 874 [1976]). “A claim that a law enforcement official used excessive force during the course of an arrest, investigatory stop, or other ‘seizure’ of the person is to be analyzed under the ‘objective reasonableness’ standard of the Fourth Amendment ...The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision hindsight” (*Campagna v Arleo*, 25 AD3d 528, 529; 807 NYS2d 629, 631 [2006] [internal citation omitted]; *quoting Mazzariello v Town of Cheektowaga*, 305 AD2d 1118). To establish that a plaintiff’s claim for excessive force lacks merit, a municipality must demonstrate that its police officers used objectively reasonable force when taking the plaintiff into custody (*Higgins v City of Oneonta*, 208 AD2d 1067, 617 NYS2d 566 [1994]; *lv appeal denied* 85 NY2d 803). In this case, the County has established that the police officers did not use excessive force in restraining the plaintiff, and the plaintiff has failed to show any evidence otherwise (*Diederich v Nyack Hospital*, 49 AD3d 491, 854 NYS2d 411 [2008]). Police Officers Dugo and Engel were told of the plaintiff’s threatening and violent behavior when they arrived on the scene. They were then situated in a narrow, dark, confined space, with the plaintiff who was acting agitated, aggressive, irrational, and resisting their efforts to control him. The plaintiff himself acknowledges that the police officers probably interpreted his actions to be hostile. As such, the court finds that police officers actions and use of handcuffs were reasonable and necessary to restrain the plaintiff. Accordingly, the County’s summary judgment motion dismissing the Fifth cause of action is granted.

As to the Sixth cause of action against the County, the complaint alleges that the County’s police officers, while in the scope and course of their employment, falsely imprisoned the plaintiff, without warrant, authority, or probable cause. In order to recover damages for false imprisonment, a plaintiff must prove four elements: (1) the defendant’s intent to confine, (2) the plaintiff’s consciousness of the confinement, (3) that the confinement was involuntary and (4) that such confinement was not privileged (*Gonzalez v State of New York*, 110 AD2d 810, 488 NYS2d 231 [1985]; *appeal dismissed* 67 NY2d 647). In the case at hand, the only dispute appears to be with the fourth element, that is, whether or not the confinement was privileged. After reviewing all the submitted evidence, the court finds that the County is entitled to the privilege afforded it by Mental Hygiene Law §9.41. This section of the Mental Hygiene Law provides in pertinent part that any police officer “may take into custody any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others.” Mental illness is defined as “an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation” (Mental Hygiene Law §1.03[20]). Here, the plaintiff’s unusual actions of screwing doors shut, tying knots in shoelaces in the doors and then studying and keeping diagrams of the knots, and building a maze of walls, together with his agitated and aggressive behavior, establish that the police officers’ conclusions, that the plaintiff was

mentally ill and may cause serious harm to himself or others, were reasonable (*see, Antoine v New York City Health and Hospitals Corp.*, 6 Misc3d 1013A, 800 NYS2d 341 [2005]; *see also, Higgins v City Of Oneonta, supra*). In opposition, the plaintiff, who has submitted no evidence contradicting the police officers' testimony, has failed to raise a triable issue of fact. Therefore, the County's summary judgment motion dismissing the Sixth cause of action is granted.

As to the Seventh cause of action against the County, the complaint alleges that County failed to take appropriate precautions and provide effective means to protect the public, including the plaintiff, from the negligent and careless acts of their employees, and failed to train and supervise such employees. (It is well settled that a plaintiff seeking damages due to a wrongful detention may not recover under broad general principles of negligence, but rather must proceed by way of the traditional remedies of false arrest and imprisonment (*Secard v Department of Social Services of the County of Nassau*, 204 AD2d 425, 612 NYS2d 167 [1994]). Moreover, as to the plaintiff's allegations of negligent hiring and supervision of the police officers, there is absolutely no evidence to support such cause of action (*see, Graham v City of New York*, 279 AD2d 435, 720 NYS2d 452 [2001]; *Gantt v County of Nassau*, 234 AD2d 338, 651 NYS2d 541 [1996]). Accordingly, the County's motion for summary judgment to dismiss the Seventh Cause of action is granted.

As to the Eighth cause of action against the County, the complaint alleges that the County's police officers, while acting within the scope of their employment and under color of their official capacity, engaged in illegal conduct, in violation of 42 USC §1983. A claim under 42 USC §1983 does not create any substantive constitutional rights; rather, it simply provides a vehicle to enforce those rights (*Incorporated Village of Ocean Beach v Maker Water Taxi Inc.*, 201 AD2d 704, 608 NYS2d 291 [1994]). In order to establish a claim under 42 USC §1983, a plaintiff must show that the conduct complained of deprived him of a right, privilege or immunity guaranteed by the Constitution or the laws of the United States and that such conduct was committed by a person acting under color of law (*DiPalma v Phelan*, 81 NY2d 754, 593 NYS2d 778 [1992]). Here, the plaintiff alleges that his rights pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments were violated because he is deaf and was taken into custody, handcuffed, transported to a psychiatric ward, and held in confinement for over eight hours, all without the benefit of a deaf interpreter or an attorney, despite the fact that he specifically asked to be provided with an interpreter and attorney.

With regard to the plaintiff's claim that he was taken into custody and transported to a psychiatric ward, the elements of such claim are almost identical to that of his false imprisonment cause of action, and as such, the same analysis that was applied to the false imprisonment cause of action applies hereto (*see, Ferretti v Town of Greenburgh*, 191 AD2d 608, 595 NYS2d 494 [1993]; *appeal dismissed* 82 NY2d 748, *h appeal denied* 82 NY2d 662). Thus, for reasons already discussed, there was no false imprisonment and there is no basis for this portion of the plaintiff's §1983 claim (*see, Davis v City of New York*, 2007 NY Slip Op 31993U, 2007 WL 2174860). With regard to the portion of the plaintiff's claim that his right to counsel was violated because he requested an attorney in the police car while he was being transported to the hospital, there is no requirement that counsel be provided to an individual at such point in a proceeding under the Mental Hygiene Law (*cf. Ughetto v Acrish*, 130 AD2d 12, 518 NYS2d 398 [1987]; *appeal dismissed* 70 NY2d 871). "Psychiatric examinations are not the equivalent of criminal interrogations" (*see, Project Release v Prevost*, 551 F.Supp. 1298, 1308 [1982]; *affd* 722 F.2d 960). With regard to the portion of the plaintiff's claim that his constitutional rights were violated because no sign-

