Ramos v City of New York
2017 NY Slip Op 32180(U)
September 12, 2017
Supreme Court, Bronx County
Docket Number: 24359/2014
Judge: Howard H. Sherman
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[* 1]

Court/County: ______________________

Case Title: ______________________

Docket Number: 00243592014

Judge: Howard S. Sherman

EXPERT(s): ______________________

File date: ______________________ **Type:** ____________

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	CV	**_CV**	Curriculum Vitae

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX - Part 4

---x

Francis Ramos,

Plaintiff

Decision and Order

-against-

The City of New York ,
Police Officer Sealey, and Police Officer "John Doe"

Defendants

Index No. 24359/2014

---x

Howard H. Sherman
J.S.C.

The following papers numbered 1-5 read on this motion for reargument of the decision/order of this court granting the motion of Defendants for a change of venue

Notice of Motion - Affirmation , Exhibits A, B	1	
Affirmation in Opposition , Exhibits A-K	2	
Affirmation in Reply	3	
Cases Submitted at Oral Argument in Support, Collectively	4	
Memorandum of Law in Opposition	5	

In the above-entitled action, plaintiff Francis Ramos (Ramos) asserts state and federal claims for false imprisonment and battery arising out of his July 7, 2013 apprehension by New York City Police Officers. The incident commenced on 166th Street between Amsterdam Avenue and Edgecombe Avenue in New York County.

At the statutory hearing, Ramos testified that he was a resident of Bronx County[HRG. 5] , and that on the evening of the incident, Officer Sealey, who had arrested him on a prior occasion, called him over at the above location, and after he approached the officer and they exchanged words, Sealey punched Ramos in his face

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[9-13]. After Ramos fell to the ground, Sealey and his partner began to kick him. When he regained consciousness ten minutes later, he was handcuffed, and in a squad car. He was driven to the front of a school near the precinct where Sealey and his partner threw him out on the ground. They, and two other officers, visually recorded him with one of the officer's phones, after which an ambulance was called [18-20]. Ramos requested to be taken to the precinct to file a complaint, but he was taken by the ambulance to Lincoln Hospital [21], arriving there at around 7:00 PM. [23]. After ten minutes, he was released from his handcuffs.

> A. They escorted me to the bathroom to change my clothes and that's it. I told the officer, I am not arrested? I want to be arrested because I want to make the complaint. They said, no, you are not arrested. I said, I told him why did you do this to me. They kept quiet.
>
> 29:22-30:3

During the period with the officers, Ramos was never taken to a precinct, nor to see a judge, nor was he issued a summons or a "ticket." [24-25].

At the hospital, Ramos complained of injuries to his face and to his right shoulder, and his eyes were checked, and a CAT scan was performed. He was informed that he had a broken cheekbone and "something in [his] jaw that needed surgery." [23:17] Ramos was discharged at around 5:00 AM the next morning [23], and he went home [24].

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Ramos also testified that before visiting Columbia Presbyterian for treatment for his injuries the next day, he went to the 33rd precinct to speak to the desk sergeant about making a complaint [26], but he was unable to do so, and he was instructed to return to point out the officers and "proceed from there." [26:19-20]. He attempted to contact the Civilian Complaint Review Board, but he was"kept on hold so [he] didn't proceed." [28-29]

Ramos filed a Notice of Claim on October 2, 2013, and commenced this action in September 2014, with venue in Bronx County being designated as "the place of the occurrence."

The City of New York moved for a change of venue pursuant to CPLR §504 [3][1], and the motion was opposed by plaintiff. By decision and order of this court the motion was granted pursuant to the authority of *Thames v. New York City Police Department*, 105 A.D.3d 481 , 963 N.Y.S. 2d 96 [1st Dept. 2013] upon this court's finding that defendants had demonstrated that the necessary elements giving rise to the causes of action for false imprisonment and battery had transpired in New York County.

Plaintiff filed a Notice of Appeal , and now moves for reargument on the grounds that the above precedent does not provide a sound basis for the court's determination as in that case all of the acts of alleged police misconduct occurred in

[1] The section provides in pertinent part that the place of trial of all actions against the City of New York shall be "in the county within the city in which the cause of action arose.... "

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Queens County, and there was no separate claim asserted arising from plaintiff's period of detention in Bronx County. Plaintiff asserts that his claim for unlawful imprisonment arises from misconduct that originated in New York County, and which continued in Bronx County, and that his proper choice of venue in the latter should not be disturbed.

The City opposes the motion on the grounds that plaintiff fails to overcome the "convenience of municipalities " reasoning underpinning CPLR 504 [3], and maintains that any argument addressed to the accrual of the cause of action for false arrest should not be considered on the motion.

Upon consideration of the papers on submission, and the applicable law, the court finds that though "technically untimely pursuant to CPLR 2221[d]", the motion for reargument will be considered in light of the fact that it is made after plaintiff's filing of a notice of appeal but prior to the perfection of that appeal (see, Garcia v. The Jesuits of Fordham, 6 A.D.3d 163, 165, 774 N.Y.S.2d 503 [1st Dept. 2004] , see also, Leist v. Goldstein, 305 A.D.2d 468, 469, 760 N.Y.S.2d 191 [2d Dept. 2003]).

The court also finds that plaintiff has demonstrated that this court misapplied governing law in determining the prior motion, as it is clear that while the claim of false imprisonment was initiated by misconduct in New York County, this tortious conduct is alleged to have continued in Bronx County where Ramos was subjected to a non-privileged confinement of which he was conscious, and to which he did not

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consent (see, Broughton v. State, 37 N.Y.2d 451, 457, 335 N.E.2d 310 [1975], *cert. denied sub nom.*, Schanbarger v. Kellogg, 423 U.S. 929, 96 S.Ct. 277, 46 L.Ed.2d 257 [1975]). As such, this court finds that the cause of action for false imprisonment arose in part in Bronx County, and as a consequence, the designation of venue in that county was proper pursuant to CPLR 503 [3]. Reliance on the precedent of Thames v. New York City Police Department, supra , was misplaced as the underlying facts are distinguishable, that court noting in pertinent part that *"[a] ll* [emphasis added] of the necessary elements giving rise to plaintiff's causes of action for false arrest and imprisonment occurred in Queens .." with no separate claim having been interposed in connection with his detention in Rikers Island (see also, Ortiz v. Codella, 123 A.D.3d 453, 998 N.Y.S. 2d 338 [1st Dept. 2014], Smith v. City of New York, 60 A.D.3d 540, 877 N.Y.S. 2d 13 [1st Dept. 2009], Garces v. City of New York, 60 A.D.3d 551, 877 N.Y.S. 2d 12 [1st Dept. 2009]).

To the extent the defendant officers were assigned to a precinct within relative proximity to the Bronx courthouse , there is no compelling argument that the City will be significantly inconvenienced as a consequence of retaining venue in Bronx County.

Accordingly, it is

ORDERED that the motion be and the same is hereby in all respects granted, and that leave to reargue defendants' motion for an order changing the place of the trial of this action be and the same is hereby granted, and it is further

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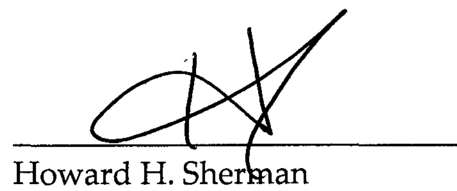
ORDERED that the order of this court entered and filed in the above-entitled action on the 11th day of September 2015 granting the motion of the defendants for a change of venue be and the same is hereby vacated and set aside, and it is further

ORDERED that upon reargument , the motion of the defendants for a change of venue to New York County, be and hereby is denied.

This shall constitute the decision and order of this court.

Dated: September 12, 2017



Howard H. Sherman