

Hysenaj v City of New York

2025 NY Slip Op 31997(U)

May 19, 2025

Supreme Court, New York County

Docket Number: Index No. 805016/2023

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. HASA A. KINGO **PART** **05M**

Justice

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DIAMANT HYSENAJ AS ADMINISTRATOR OF THE
ESTATE OF BORIM HUSENAJ DECEASED,

Plaintiff,

INDEX NO. 805016/2023

MOTION DATE N/A

MOTION SEQ. NO. 003

- v -

CITY OF NEW YORK, POLICE OFFICER JUAN C PEREZ

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54

were read on this motion for

SUMMARY JUDGMENT

Plaintiff Diamant Hysenaj (“Plaintiff”), as Administrator of the Estate of Borim Hysenaj (“Mr. Hysenaj”), moves for partial summary judgment pursuant to CPLR § 3212 on the issue of liability with respect to the first cause of action (assault, battery, and excessive force under state law), the second cause of action (civil rights violations under 42 U.S.C. § 1983), and the third cause of action (wrongful death), against defendant Police Officer Juan C. Perez (“Officer Perez”), and the first and third causes of action against defendant City of New York (“the City”).

BACKGROUND AND PROCEDURAL HISTORY

In this civil rights action, Plaintiff seeks damages in connection with the arrest of the Mr. Hysenaj by members of the New York City Police Department (“NYPD”) on November 10, 2021 (NYSCEF Doc No. 1, complaint ¶ 8). As asserted in the motion, on November 10, 2021 at around 9:40 p.m., on the sidewalk in front of 103-105 Macdougall Street, New York, New York, Officer Perez and non-party Police Officer Stephen Brier (“Officer Brier”) responded to a police radio transmission regarding an emotionally disturbed person in the vicinity of Bleeker and Sullivan Streets (NYSCEF Doc No. 43, Reiter aff in support ¶ 2). The officers proceed to the location, where they encountered Mr. Hysenaj (*id.*). Officer Perez escorted Mr. Hysenaj to the sidewalk in front of 103 Macdougall street (*id.*). At some point, Officer Perez placed Mr. Hysenaj on the ground with his arms being restrained by Officer Brier (*id.*). Officer Perez then punched Mr. Hysenaj six times in the face, knocking him unconscious and causing injuries for which he was treated at Bellevue Hospital (*id.*). This encounter was captured on video by police body cameras as well as bystanders (*id.*). Mr. Hysenaj suffered from a variety of psychological symptoms after the incident and ultimately died by suicide on March 4, 2022, three months after the arrest (*id.* ¶ 4; NYSCEF Doc No., complaint ¶ 1). Plaintiff, Mr. Hysenaj’s father, was appointed administrator of Mr. Hysenaj’s estate on November 9, 2022 (NYSCEF Doc No., complaint ¶ 2).

Officer Perez was subsequently prosecuted by the District Attorney of New York County under Indictment Number 72468/2023 and charged with Assault in the Third Degree (NYSCEF Doc No. 43, Reiter aff in support ¶ 3). Officer Perez waived a jury trial and a bench trial was held before Justice Maxwell Wiley on July 8, 9, and 11, 2024 (*id.*). The trial resulted in a guilty verdict (*id.*; NYSCEF Doc No. 45, Certificate of Disposition). Officer Brier testified at the trial that during the arrest he told Officer Perez to stop punching Mr. Hysenaj (NYSCEF Doc No. 43, Reiter aff in support ¶ 2).

Plaintiff filed a notice of claim in connection with the arrest with the Comptroller of the City of New York on November 29, 2022. On January 17, 2023, Plaintiff commenced this action by filing a summons and complaint against the City and Officer Perez (together, “Defendants”). The complaint interposes causes of action for (1) assault, battery, excessive force against both Defendants, (2) civil rights violations under 42 USC ¶ 1983 against Officer Perez, (3) and for wrongful death against both Defendants (*id.*).

On January 30, 2023, Plaintiff filed a motion, by order to show cause, for leave to file a late amendment to the notice of claim (NYSCEF Doc No. 3, proposed order to show cause). The motion was granted on consent on December 28, 2023, and the notice of claim deemed admitted *nunc pro tunc* (NYSCEF Doc no. 26).

On June 1, 2023, the City filed an answer on its own behalf (NYSCEF Doc No. 30). On June 7, 2023, Plaintiff filed a motion seeking entry of a default judgment against Officer Perez (NYSCEF Doc No. 32). The City then filed an amended answer on its own behalf and on behalf of Officer Perez and the motion for a default judgment was withdrawn (NYSCEF Doc No. 39, 40). A case scheduling order was entered on August 1, 2024 (NYSCEF Doc No. 41).

Plaintiff now moves for partial summary judgment, arguing that Officer Perez’s criminal conviction is dispositive of civil liability under the doctrines of collateral estoppel and respondeat superior.

ARGUMENTS

Plaintiff seeks partial summary judgment holding both Officer Perez and the City liable on the state-law claims for assault, battery and excessive force (first cause of action) and wrongful death (third cause of action), and holding Officer Perez individually liable on the § 1983 claim (second cause of action) (NYSCEF Doc. No.42). At the heart of Plaintiff’s motion is Officer Perez’s July 11, 2024 conviction for Assault in the Third Degree. Relying principally on *S.T. Grand, Inc. v. City of New York*, 32 NY2d 300 (1973), and companion precedents such as *Schwartz v. Public Administrator*, 24 NY2d 65 (1969), Plaintiff argues that this conviction is not merely prima facie evidence, but conclusive proof of the underlying facts in any ensuing civil action. Under the doctrine of collateral estoppel, an issue necessarily decided in the prior proceeding—here, that Officer Perez used unreasonable force while acting in the scope of his employment—cannot be relitigated, provided there was a full and fair opportunity to contest it.

Plaintiff further asserts that, because Officer Perez was on duty and in uniform when he committed the assault, the City of New York is vicariously liable under *Riviello v. Waldron*,

47 NY2d 297 (1979). Finally, although Plaintiff acknowledges that causation of the decedent's subsequent suicide must be reserved for trial, he contends that all other elements of the wrongful death claim are satisfied and that liability should be determined as a matter of law.

In opposition, the City asserts that the trial transcripts “demonstrates that the verdict left open the question of whether the initial punches were justified and what injuries were caused by the various punches” (NYSCEF Doc No. 52, Mitchell aff in support ¶ 4). Specifically, the City points to portions of the transcript where Officer Brier testified that while Officer Perez was attempting to handcuff Mr. Hysenaj, both of the men fell to the ground and then Mr. Hysenaj swung his arm around Officer Perez' neck, pinning him down. The City further contends that Officer Perez had to forcibly remove Mr. Hysenaj's arm from his neck and Mr. Hysenaj was actively resisting Officer Perez's efforts to handcuff him. The City argues that “the issue of whether some of the punches were justified remains undetermined” and “[t]he assessment of the circumstances underlying each punch is crucial to the liability issues presented in this case.”

Counsel to Officer Perez argues that the doctrines of *res judicata* and collateral estoppel do not apply because the issues were not necessarily decided in the criminal case because the judge's verdict was silent regarding which use of force violated the law. Officer Perez asserts that “[g]iven the lack of clarity, it would be inappropriate for this [c]ourt to determine that the issue was fully decided.” Officer Perez also argues that he is entitled to qualified immunity and that Plaintiff has not established the element of causation for the wrongful death cause of action.

DISCUSSION

A party moving for summary judgment must demonstrate, as a matter of law, the absence of material factual disputes (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once a prima facie showing is made, the burden shifts to the non-movant to present evidence sufficient to raise a triable issue (*id.*).

In the discussion below, the court finds that Plaintiff has made a prima facie showing of Officer Perez's liability based on the following uncontested evidence: (1) the criminal conviction for Assault in the Third Degree entered on July 11, 2024 following a fully contested bench trial before Justice Wiley (Reiter Aff. ¶ 3; Ex. A); (2) the uncontroverted testimony of Officer Brier that Mr. Hysenaj was restrained and non-resisting when struck six times (Reiter Aff. ¶ 2; Ex. A); and (3) the admitted scope-of-employment facts demonstrating Perez was acting in uniform and pursuant to a dispatch call (Reiter Aff. ¶ 2). Defendants have not successfully rebutted this showing, as their suggestions that some punches may have been justified go only to damages or causation, and their qualified-immunity argument is foreclosed by the criminal court's determination that the force used was excessive. The court will address each of the arguments in turn.

I. Collateral Estoppel

Collateral estoppel precludes relitigation of an issue when:

1. The identical issue was necessarily decided in the prior proceeding;

2. The party had a full and fair opportunity to contest the issue. (*Schwartz v Public Adm'r*, 24 NY2d at 71, *supra*).

Here, Officer Perez was convicted of Assault in the Third Degree for punching a restrained, non-resisting Mr. Hysenaj six times in the face. This was the sole issue tried and resolved in the criminal court. The testimony of Officer Brier, captured on body camera and supported by eyewitness accounts, established that the victim was subdued at the time of the assault.

As held in *S.T. Grand*, 32 NY2d at 305, *supra*, and reaffirmed in *D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659 (1990), a criminal conviction following a contested trial is conclusive proof of the underlying facts and may form the basis for civil liability. The criminal conviction thus satisfies both prongs of the estoppel doctrine.

That the verdict did not parse each individual strike is of no consequence. The crime of Assault in the Third Degree under Penal Law § 120.00(1) requires the intentional infliction of physical injury. The conviction affirms, at minimum, that one or more strikes exceeded any reasonable use of force, and no legal justification negates the liability for the excessive force. Arguments regarding which strikes were excessive go to damages, not liability.

II. Excessive Force and § 1983

“[A]ssault and battery claims, when alleged against a police officer, are evaluated like excessive force claims” (*Brown v City of New York*, 2013 WL 491926 [SDNY 2013], citing (*Holland v. City of Poughkeepsie*, 90 AD3d 841, 845 [2d Dept 2011])). Under both state and federal law, “claims that law enforcement personnel used excessive force in the course of an arrest are analyzed under the Fourth Amendment and its standard of objective reasonableness” (*Holland v City of Poughkeepsie*, 90 AD3d at 844, *supra*, citing *Ostrander v State of New York*, 289 AD2d 463, 464 [2d Dept 2001])). “That analysis requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake” (*id.* [internal quote omitted]). “The use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, recognizing that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation” (*id.*)

Claims of excessive force under 42 U.S.C. § 1983 are governed by the Fourth Amendment’s objective-reasonableness standard, which asks whether the officer’s actions “are ‘objectively reasonable’ in light of the facts and circumstances confronting them” (*Graham v. Connor*, 490 US 386, 396–97 [1989]; *accord Holland*, 90 AD3d at 844, *supra*). In making this determination, courts consider such factors as the severity of the crime at issue, whether the suspect poses an immediate threat to officer or public safety, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight. These touchstone inquiries ensure that officers may use only that degree of force necessary to effect lawful objectives, no more and no less.

Here, the criminal court’s unequivocal finding that Officer Perez committed an unprovoked assault fundamentally undercuts any argument that his use of force was objectively reasonable.

Where an adjudication of criminal liability establishes that an officer's conduct was not justified, the Fourth Amendment inquiry is effectively resolved against the officer, and the plaintiff's claim under § 1983 must succeed (*see Delgado v. City of New York*, 86 AD3d 502, 502 [1st Dept 2011] [reliance on criminal conviction to preclude qualified immunity and defeat summary judgment]; *Shamir v. City of New York*, 804 F.3d 553, 557–58 [2d Cir. 2015][civil § 1983 plaintiff entitled to rely on criminal conviction establishing use of excessive force]).

Although the defense may quibble that only some of Officer Perez's blows were excessive, that distinction does not insulate him from liability. The criminal conviction demonstrates that, at minimum, a portion of his force was utterly unjustified—and once excessive force is established, the civil rights plaintiff may recover for all injuries flowing from the encounter. Any suggestion that certain punches were “justified” at best relates to the quantum of damages, not to the threshold question of liability, and can be presented to a jury at the damages-phase trial. Accordingly, Plaintiff's § 1983 claim must proceed: the Fourth Amendment does not countenance splitting hairs over isolated blows when a law enforcement officer has been criminally adjudicated to have unleashed unprovoked violence.

III. Qualified Immunity

“A government official performing a discretionary function is entitled to qualified immunity provided his or her conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (*Delgado*, 86 AD3d at 510, *supra*). To be entitled to qualified immunity, it must be established that it was objectively reasonable for the police officer involved to believe that his or her conduct was appropriate under the circumstances, or that officers of reasonable competence could disagree as to whether his or her conduct was proper” (*id.*). As such, qualified immunity shields officers from liability where their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (*Harlow v Fitzgerald*, 457 US 800, 818 [1982]). However, such immunity does not protect “the plainly incompetent or those who knowingly violate the law” (*Malley v Briggs*, 475 US 335, 341 [1986]).

Here, Officer Perez's conduct, found criminally excessive in the context of a subdued, non-resisting individual, cannot be characterized as objectively reasonable. The conviction bars any argument that the officer was mistaken yet reasonable in his belief (*Delgado*, 86 AD3d at 510, *supra*). Qualified immunity does not shield Officer Perez from civil liability in these circumstances.

IV. Respondeat Superior and City Liability

It is well-settled that municipalities may be held liable for torts committed by their employees acting within the scope of employment (*Riviello*, 47 NY2d 297, *supra*; *Holland*, 90 AD3d at 844, *supra*).

Here, Officer Perez was on duty, in uniform, responding to a dispatch call when he assaulted Mr. Hysenaj. That his actions were improper does not render them outside the scope of

employment (*Jones v State of New York*, 33 NY2d 275 [1973]). The City of New York is therefore vicariously liable for his conduct.

V. Wrongful Death

The elements of a cause of action to recover damages for wrongful death are (1) the death of a human being, (2) the wrongful act, neglect or default of the defendant by which the decedent's death was caused, (3) the survival of distributees who suffered pecuniary loss by reason of the death of decedent, and (4) the appointment of a personal representative of the decedent (*James v Middletown Community Health Ctr., Inc.*, 278 AD2d 280 [2d Dept 2000]).

Here, Plaintiff concedes that the issue of proximate causation as to the decedent's suicide should be reserved for trial. The record establishes the remaining elements: (1) death, (2) wrongful conduct, (3) distributees, and (4) appointment of a representative. Partial summary judgment on liability is appropriate, reserving the causation issue for trial.

Accordingly, it is:

ORDERED that Plaintiff's motion for partial summary judgment is **GRANTED** as to liability on the first and second causes of action against Officer Juan C. Perez; and it is further

ORDERED that Plaintiff's motion for partial summary judgment is **GRANTED** as to liability on the first Cause of action against the City of New York under the doctrine of respondeat superior; and it is further

ORDERED that Plaintiff's motion for partial summary judgment is **GRANTED IN PART** on the third cause of action, solely as to the wrongful conduct element of wrongful death, with the issue of causation reserved for trial; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in Plaintiff's favor on the aforementioned issues of liability accordingly; and it is further

ORDERED that the parties shall appear for an in-person settlement conference on Thursday June 12, 2025 at 10:30 AM in Room 320 of the courthouse located at 80 Centre Street, NY, NY; and it is further

ORDERED that the matter shall proceed to trial on the remaining issues of damages and causation.

This constitutes the decision and order of the court.

5/19/2025

DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER