

Smith v Perez

2025 NY Slip Op 33335(U)

September 5, 2025

Supreme Court, New York County

Docket Number: Index No. 453167/2022

Judge: Richard Tsai

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

PRESENT: HON. RICHARD TSAI PART 21

Justice

-----X

ROBERT O. SMITH and LAWRENCE FRANCIS,

Plaintiffs,

- v -

ALLAN PEREZ, NEW YORK CITY TRANSIT AUTHORITY
and THOMAS PATTERSON,

Defendants.

-----X

INDEX NO. 453167/2022

MOTION DATE 2/7/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 63-76, 91-111,¹ 113-115

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

APPEARANCES

Roth & Khalife, LLP, Manhattan (*Elias Khalife* of counsel), for plaintiff Robert O. Smith.

Giordano, Glaws, Fenstermacher & Nash, LLP, Manhattan (*Jacob Setterfield Traub* of counsel), for defendants Allan Perez and New York City Transit Authority.

Peknic, Peknic & Schaefer, LLC, Long Beach (*Catherine Papandrew* of counsel), for defendant Thomas Patterson.

OPINION OF THE COURT

Richard Tsai, J.:

In this personal injury action arising out of a motor vehicle collision with a bus, plaintiff Smith² now moves for summary judgment in his favor on the issue of liability against the owner and operator the bus, defendants New York City Transit Authority (NYCTA) and Allan Perez (collectively, the Transit Defendants). Smith also seeks summary judgment “striking any and all of the Defendants’ affirmative defenses relating

¹ The exhibits referenced in the Transit Defendants’ papers in opposition to Smith’s motion for summary judgment were filed as papers to another, unrelated, motion (Sequence No. 003). As there appears to be no apparent prejudice to Smith or Patterson, this court will overlook the e-filing mistake and consider these submissions (NYSCEF Doc. Nos. 91-104) as part of the record on this motion, pursuant to CPLR 2001.

² On April 10, 2025, this court issued an order permitting then plaintiffs’ counsel to withdraw from their representation of plaintiff Lawrence Francis only (Seq. No. 004 Order [NYSCEF Doc. No. 123]).

to the Plaintiff's alleged comparative fault herein" (Smith's notice of motion [NYSCEF Doc. No. 63]).

Smith further seeks an order granting him summary judgment as to liability in Smith's favor against defendant Patterson, on the ground that Smith was an "innocent passenger" in defendant Patterson's vehicle.

The Transit Defendants and Patterson oppose the motion.

The issue presented is whether a momentary stop of a vehicle that lasts two to three seconds may constitute a gesture signaling to another driver that the driver of the stopped/stopping vehicle has yielded the right of way to the other driver. This court holds that the momentary stop in this case did not constitute the kind of intentional, physical gestures that are directed at another motorist under the case law involving voluntary gestures to yield.

BACKGROUND

Plaintiffs Robert O. Smith and Lawrence Francis allege that, on July 28, 2021, they were passengers in a motor vehicle operated by defendant Thomas Patterson, which came into contact with a bus operated by Perez and owned by the NYCTA (Smith's exhibit 1 in support of motion [NYSCEF Doc. No. 66] complaint ¶¶ 31-35).

In their answers, defendants all admit that they were the owners and/or operators of their respective vehicles but deny that they were responsible for causing the accident (Smith's exhibit 2 in support of motion [NYSCEF Doc. No. 67], NYCTA and Perez's answer ¶ 7; Smith's exhibit 3 in support of motion [NYSCEF Doc. No. 68], Patterson's answer ¶¶ 2-3).³

At his statutory hearing, Smith testified as follows: on the date of the accident, sometime between 11:30 p.m. and midnight, he was in a car driven by Patterson, with Francis and another unidentified individual, traveling north on Amsterdam Avenue (Smith's exhibit 7 in support of motion, statutory hearing tr at 9, line 6 through 10, line 5; at 16, line 24 through 18, line 16 [NYSCEF Doc. No. 72]).

Smith testified that the accident occurred on 139th Street and Amsterdam Avenue, but he could not recall whether the accident occurred at the intersection or between the two blocks (*id.* at 18, lines 7-22). When asked about the number of northbound lanes of traffic on Amsterdam Avenue, Smith did not remember; he recalled only that the traffic went in both directions (*id.* at 18, lines 23-25; at 19, lines 2-5).

When asked how the accident happened, Smith testified, "Umm I can't really tell you what really happened. I know I was in the car and I heard the driver like, and I

³ On February 27, 2024, this court issued an order joining this action with the related action *Patterson v Perez*, 158880/2022, for purpose of joint discovery and a joint trial on the issue of liability (Seq. No. 001 Order [NYSCEF Doc. No. 52]).

heard a big bump but it shook me a little bit” (*id.* at 19, lines 13-18). According to Smith, he “saw the bus come and hit us sideways” as the bus was “pulling out,” but he did not remember if the bus was pulling out of a designated bus stop (*id.* at 19, line 23 through 20, line 12).

Smith further indicated that, at the time of the accident, he was sitting in the front seat, and that he saw the bus hit the car on the right side, “close to the middle where I was at” (*id.* at 21, line 11 through 22, line 1). Smith further testified that he was unable to approximate how fast his car or the bus were traveling, but stated that both his vehicle and the bus came to a stop after the collision (*id.* at 22, line 2-11).

Smith further testified that, right after the accident, he noticed an unidentified scooter “pulling out. Speeding off” and traveling north on Amsterdam Avenue (*id.* at 20, line 13 through 21, line 10). At his deposition, Smith testified, “I was dozing off and opened my eyes a little bit and I seen a motorcycle, like a little moped goes in front of the bike, and I seen the bus instead of hitting the bike he swerved over to our side” (Transit Defendants’ Exhibit H in opposition to motion, Smith EBT at 99, lines 11-19 [NYSCEF Doc. No. 99]).

At his statutory hearing, Patterson described how the accident unfolded in the following colloquy:

“ Q. Tell me what happened as you proceeded on Amsterdam Avenue going south between 139th and 138th?

A. Ok. The bus was at the --- I saw the bus at the bus stop so as I proceeded, he pulled out without any blinkers and the next thing you know I see a scooter come out and jump in front of him and he came you know, went towards you know, so that's what happened.
As I noticed the bus going towards the left, it came toward me and I tried to avoid it but he hit.

* * *

Q. Alright. Hold on. Did the accident happen when you saw --- Did the accident happen before you saw the scooter jump out in front of the bus or after it jumped out in front of the bus? Your accident.

A. My accident happened after I noticed the scooter jumped out in front.

Q. Jumped out in front of you or the bus?

A. The bus because he jumped in front of the bus and then came out inside my lane. So I was already assuming that he tried --- The bus driver tried to avoid hitting the scooter.

Q. And when the bus tried to avoid hitting the scooter, did the bus changed [sic] lanes?

A. Yes sir.

Q. Alright. Tell me exactly what made him change from what lane?

A. From the right lane to the left lane which pushed me out all the way to the other side of the traffic of the double line which would be the north lane, northbound lane” (Transit Defendants’ Exhibit D in opposition to motion, Patterson statutory hearing tr at 14, line 20 through 15, line 3; at 16, line 17 through 17, line 9 [NYSCEF Doc. No. 95]).

In a NYCTA Accident Report, signed by Perez, Perez described the accident as follows:

“I was leaving bus stop and there was a person on a bike in front of the bus. I waited for the bike to leave the bus stop. The car behind me on my left side slowed down to give me the right of way. When I started to drive out of the bus stop, the vehicle that gave me the right of way then started to move straight and made impact with the left side of the bus” (Smith’s exhibit 8 [NYSCEF Doc. No. 73] at pdf page 11 of 11).

In his affidavit,⁴ Perez states that, right before the accident, he was stopped at the bus stop located at Amsterdam Avenue and 140th Street, while he discharged the last passenger there (see Transit Defendants’ corrected exhibit I in opposition to motion, Perez aff ¶ 7 [NYSCEF Doc. No. 114]). According to Perez, he observed “a non-party in front of me at the south end of the bus stop, intending to cross the double yellow line over Amsterdam Avenue” (*id.* ¶ 8). Perez states that he thus maintained the bus “in complete stop for the non-party to depart” (*id.* ¶ 9).

Perez states that, while he was “in complete stop” he also observed Patterson’s vehicle come to a “complete stop” in the left lane behind him thereby “yielding the right of way to me” (*id.* ¶¶ 10-11). Perez states that he then “proceeded to swing left with the

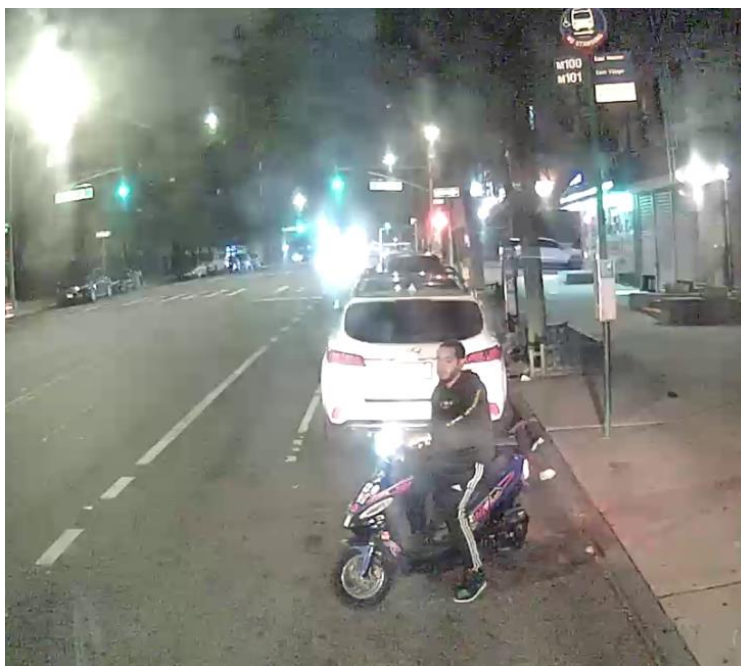
⁴ As Smith points out in reply, Perez’s affidavit is unsigned (see Transit Defendants’ exhibit I in opposition to motion [NYSCEF Doc. No. 100]). However, literally less than 20 minutes after Smith brought the defect to their attention, the Transit Defendants then submitted a signed and dated copy of Perez’s affidavit (NYSCEF Doc. No. 114), to which Smith’s counsel had objected, pointing out that the affidavit was not sworn to before a notary (see NYSCEF Doc. No 115).

Under these circumstances, pursuant to CPLR 2001, the court will overlook the failure of Transit Defendants to timely submit the signed copy of the Perez affidavit with the opposition papers and consider the Perez affidavit in its subsequent, signed format (see *KSP Constr., LLC v LV Prop. Two, LLC*, 224 AD3d 58, 66 [1st Dept 2024] [“Plaintiff does not allege (let alone establish) that it was prejudiced by defendant owners’ belated submission of the affidavit in admissible form”]). The corrected affidavit contains the requisite language to qualify it as an affirmation.

right of way at approximately 3 miles per hour” while the vehicle behind him remained in complete stop (*id.* ¶¶ 12-13). However, as he “managed to enter into the travel lane, maintaining the same rate of speed, [Patterson]’s vehicle, without notice or warning, began to proceed with significant acceleration” (*id.* ¶ 14). Perez states that he “immediately honked the horn on noticing [Patterson]’s sudden acceleration” and then “[Patterson]’s vehicle made contact to the left side of the bus in the middle” (*id.* ¶¶ 15-16).

The Transit Defendants also submit video surveillance footage from the bus at the time of the accident (Transit Defendants’ exhibit J in opposition to motion [NYSCEF Doc. No. 101], Notice of Hard Copy Filing – video), which Perez states is “a fair accurate representation of the events and circumstances” surrounding the subject accident (signed Perez affidavit ¶ 20).

At timestamp 00:16:34, the front facing camera of the bus depicts an unidentified individual on what appears to be a scooter stopped in the bus lane in front of the bus, looking in the direction of oncoming traffic⁵:

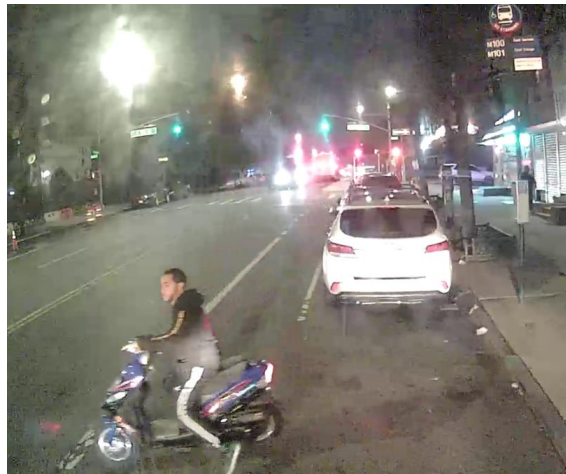


At timestamp 00:16:37, the unidentified individual advances the scooter into the bike lane:

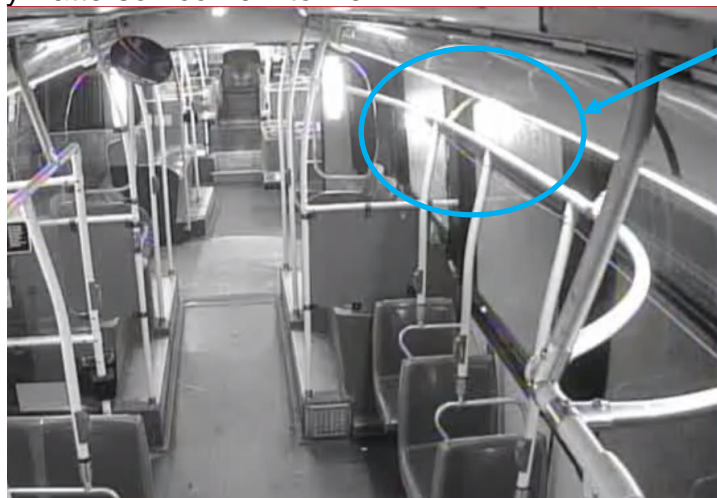
⁵ The still frames of the video in this decision (used for purposes of illustration) were cropped from the video while playback was paused.



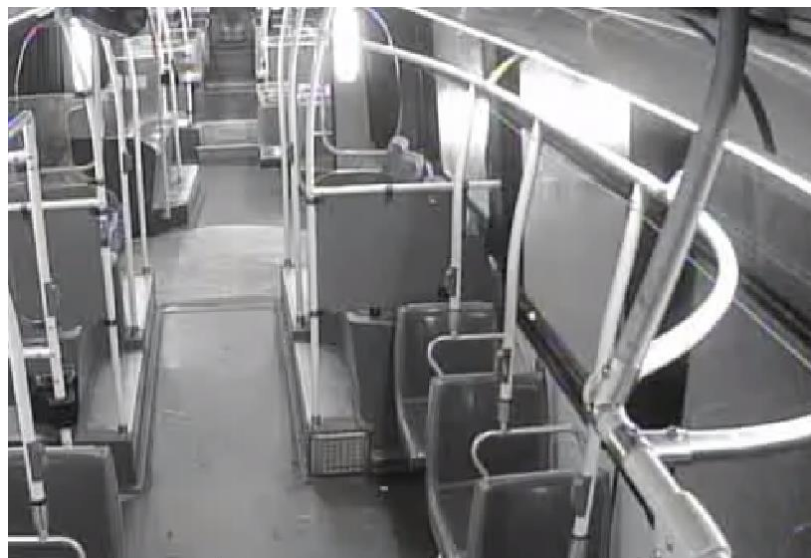
At timestamp 00:16:54, the bus begins to move, while the individual waits in the bike lane until timestamp 00:16:55:



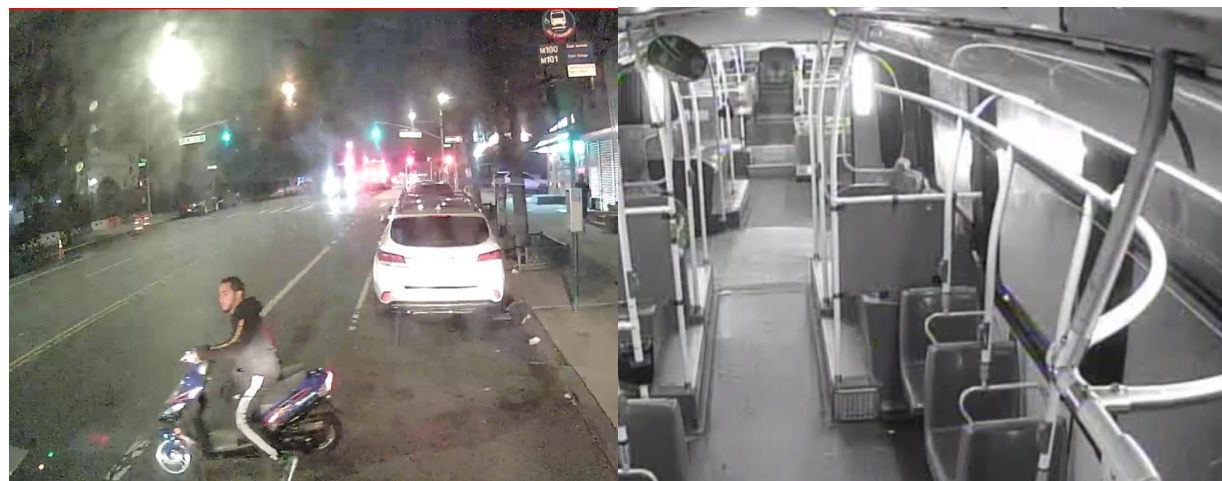
Meanwhile, at the same time, an interior camera captures several vehicles passing the bus through the bus's left window. At around timestamp 00:16:51, the lights of the vehicle operated by Patterson come into view:



Patterson's vehicle appears to almost completely stop alongside the back of the bus at 00:16:52, but the vehicle continues to roll forward very slowly:



At timestamp 00:16:55, the individual on the scooter enters into the Patterson's lane of traffic to cross over into the opposite lanes of the traffic, while the bus begins to pull out into Patterson's lane of travel:



At timestamp 00:16:58, the lights of Patterson's car appear to be moving; and at timestamp 00:17:03, the interior bus camera captures contact between the bus and

Patterson's car:



The Supervisor's Accident/Incident Investigation Report memorializes the various on-scene interviews conducted following the accident:

Interviewed operator. He stated while leaving bus stop, unknown motorist on Scouter (motorized) shot out from front of bus into South Bound traffic lane. Bus was moving at same time and moved into path of Auto #1. Operator sounded horn and auto #1 made contact with middle left side of bus. Big called console for assistance.

Interviewed motorist. He stated while moving straight in South Bound lane, a Scouter shot out in front of his car. →

Supervisor Ortiz Pass/PR # N3746 Title SLD Signature Michael [Signature]

motorist attempted to swerve and stop but bus was moving out of bus stop as well auto made contact w/ middle left side of bus w/ right front of Auto. Motorist name is Thomas Patten.

Interviewed passenger Francis Lawrence. He stated he was sitting in rear of Auto behind motorist. He noticed just on Scouter shoot out in front of Auto and heard Auto made contact with bus.

Interviewed passenger Robert Patty. He stated he was sitting in rear right side. He noticed a Scouter shoot out in front of Auto and motorist had no time to react. Auto made contact w/ bus.

(see Plaintiff's Exhibit 7 in support of motion [NYSCEF Doc. No. 73]) .

DISCUSSION

“To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party” (*Nellenback v Madison County*, —NY3d—2025 NY Slip Op 02263 [2025] [internal citations omitted]).

I. Branch of Smith's Motion for Summary Judgment in his favor against the Transit Defendants

Vehicle and Traffic Law § 1128 (a) states that “[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety” (*id.*). A violation of Vehicle and Traffic Law § 1128 (a) “constitutes negligence per se” (*Chavis v Zorrilla*, 222 AD3d 581, 581 [1st Dept 2023]).

Here, Smith's statutory hearing testimony and the internal accident reports created by Transit Defendants establish Smith's prima facie entitlement to summary judgment as against Transit Defendants, as it establishes that Perez “violated his duty not to enter a lane of moving traffic until it was safe to do so” (*Leach v GVC II Inc.*, 235 AD3d 469, 469 [1st Dept 2025], citing Vehicle and Traffic Law § 1128 [a]). Although Transit Defendants argue that Smith's statutory hearing testimony is inadmissible because it was not signed by Smith, “it was submitted by the party deponent himself, and therefore, was adopted as accurate by the deponent” (*Franco v Rolling Frito-Lay Sales, Ltd.*, 103 AD3d 543, 543 [1st Dept 2013]). Further, there is no challenge to the accuracy of the statutory hearing transcript (*id.*). Therefore, the statutory hearing transcript is admissible and establishes Smith's prima facie entitlement to partial summary judgment on the issue of liability as against the Transit Defendants.

As the NYCTA is the admitted owner of the vehicle operated by Perez with NYCTA's permission (see plaintiff's Exhibit 2 in support of motion, answer ¶ 3 [NYSCEF Doc. No. 6]), plaintiff met his prima facie burden that NYCTA is vicariously liable for Perez's negligence under Vehicle and Traffic Law § 388 (see *Murdza v Zimmerman*, 99 NY2d 375, 379 [2003]). As the incident occurred within the scope of Perez's employment, NYCTA is also vicariously liable for Perez's negligence under the doctrine of respondeat superior (*Riviello v Waldron*, 47 NY2d 297, 302 [1979]; *Ryga v New York City Tr. Auth.*, 17 AD3d 561, 562 [2d Dept 2005]).

In opposition, the Transit Defendants contend that Perez did not act negligently because Patterson was “yielding the right of way to [Perez]” by coming to a “complete

stop” in the left lane behind the bus (memorandum of law by counsel for the Transit Defendants in opposition to motion ¶ 14 [NYSCEF Doc. No. 106]). Transit Defendants contend that there is, at the very least, a material issue of fact as to whether Perez breached his duty not to move into the left lane until it was safe to do so, given that Perez asserts that Patterson yielded the right of way to him by coming to a complete stop (*id.*).

In reply, Smith does not address the Transit Defendants’ argument that, by stopping, Patterson had yielded the right of way to Perez. Rather, Smith’s counsel only emphasizes that the bus entered Patterson’s lane of travel while Patterson’s vehicle had the right of way (reply affirmation of counsel ¶ 24 [NYSCEF Doc. No. 113]).

Contrary to the arguments by the Transit Defendants, Smith’s motion for summary judgment is not premature. Perez submitted an affirmation⁶ in opposition to the motion (exhibit I in opposition to motion [NYSCEF Doc. No. 100]). The mere hope that additional discovery may lead to sufficient evidence to defeat a summary judgment motion is insufficient to deny such a motion” (*Singh v New York City Hous. Auth.*, 177 AD3d 475, 476 [1st Dept 2019]).

It is well-settled that, “[w]hen one driver chooses to gratuitously signal to another person, indicating that it is safe to proceed or that the signaling driver will yield the right-of-way, the signaling driver assumes a duty to do so reasonably under the circumstances” (*Dyakiw v Salian*, 216 AD3d 619, 620 [2d Dept 2023]). In this case, unlike a hand gesture, the Transit Defendants argue that the stop of a vehicle itself constitutes such a signal, but they cite no authority for the proposition that the mere act of stopping one’s vehicle can constitute a gratuitous signal indicating that a driver has yielded the right of way (see memorandum of law by counsel for the Transit Defendants in opposition to motion ¶¶ 14,26, 32). Neither is this court aware of any such precedent.

In some circumstances, where a vehicle with the right of way stops when it would otherwise have been expected to proceed, a question of fact could arise as to whether the stop might reasonably be interpreted as gesture to yield. For example, if that vehicle were stop in the middle of the road, just before a driveway or garage, the stop could be seen as yielding the right of way to another vehicle in that driveway or garage entrance/exit. After all, why would the driver with the right of way stop before that driveway entrance, if not to let the other driver enter upon the roadway? But in this case, the bus was changing lanes into Patterson’s lane of travel.

Williams v Weatherstone (23 NY3d 384 [2014]) is instructive. There, the twelve-year-old plaintiff “was struck by a car before the approaching school bus stopped to pick her up” (*id.* at 389). The plaintiff argued that, because the defendant school bus driver initially passed her and then turned around to pick her up, by doing so the bus driver effectively “signal[ed] to [the plaintiff] to leave the safety of her designated bus stop and cross Route 5” (*id.* at 402).

⁶ The court notes that this document is titled an “affidavit” but it is not notarized.

The Court of Appeals rejected this argument, noting that all of the cases imposing liability on signaling drivers “entail some intentional hand motion or gesture directed by the motorist at the pedestrian” and there were no such hand motions or gestures signaling to the twelve-year-old plaintiff (*id.* at 402).

In *McFerran v Barba* (130 AD3d 1344, 1344-45 [3d Dept 2015]), the plaintiff gestured to the defendant, signaling that he would yield the right-of-way and allow her to turn in front of him. After seeing the plaintiff's signal, the defendant hesitated, because she was checking the crosswalks and the other traffic in the area of the intersection to ensure that it was safe to proceed before she began her turn. The plaintiff testified that when defendant hesitated, he decided that she was not going to accept his offer to yield. The Appellate Division, Third Department held, “The fact that defendant made an independent check of other traffic at the intersection does not negate her right to rely on plaintiff's signal representing that he would allow her to turn before he proceeded” (*id.* at 1344).

Williams instructs that a gratuitous signal to yield must involve an intentional, physical gesture that is directed at the other motorist (or pedestrian), and *McFerran* instructs that the act of coming to a stop in a vehicle can be consistent with the exercise of caution before proceeding. Therefore, it follows that the mere act of coming to a stop cannot constitute either an affirmative, intentional gesture from the driver, or a gesture directed at the other motorist (*see Pickard v Morris*, 91 NH 65, 69 [1940] [the plaintiff's conclusion that the defendant had the intention of yielding merely by slowing down “was based on guess rather than on reason”]).

This conclusion is buttressed by the fact that, in this case, the stop lasted, at most, three seconds. According to the video, it appears that the earliest point in time that Patterson's vehicle stops is at 00:16:52. Roughly three seconds later, at 00:16:55, the scooter pulls out into the street, while Patterson's vehicle resumes traveling forward. Given this timing, it appears equally likely that Patterson could have stopped for the purpose of avoiding contact with the scooter.

Also, to recognize a brief stop as an intentional gesture could significantly expand a driver's liability with regard to pedestrians. For pedestrians, the gesturing driver signals not only that the driver is yielding the right-of-way, but also that it is safe to proceed, thereby assuming a duty for another motorist's negligence (*see Ohlhausen v City of New York*, 73 AD3d 89, 93 [1st Dept 2010]). Given the level of stop-and-go traffic in Manhattan, a brief stop as an intentional gesture that it is safe for pedestrians to proceed would significantly expand a driver's liability. Lastly, to recognize brief stops as intentional gestures could lead to conclusion that a triable issue of fact would always arise out of collisions involving lane changes in Manhattan.

Thus, under these circumstances, the court does not find that the brief stop of Patterson's vehicle raises a triable issue of fact as to whether Patterson had yielded the right of way to Perez to enter into Patterson's lane of travel.

To be clear, the conclusion that Patterson's brief stop cannot constitute a gesture to yield to the right of way to Perez should not be read as a determination of the issue of whether Patterson negligently operated his vehicle, which is not before this court. "[T]he driver traveling with the right-of-way may be found to have contributed to the accident if they do not use reasonable care to avoid the accident" (*see Caparitia v Johnson*, 216 AD3d 529, 529 [1st Dept 2023]).

As issues of apportioning fault are not a basis to deny summary judgment in plaintiff's favor as to liability (*Rodriguez v City of New York*, 31 NY3d 312, 315 [2018]), the branch of Smith's motion for summary judgment as to liability in his favor against the Transit Defendants is granted.

To be clear, the determination of the Transit Defendants' fault as a matter of law on this motion does not include the issue of whether Smith suffered a serious injury within the meaning of Insurance Law § 5102 (d), "which is a threshold matter separate from the issue of fault" (*Reid v Brown*, 308 AD2d 331, 332 [1st Dept 2003]).

II. Branch of Smith's Motion for Summary Judgment "striking any and all of the Defendants' affirmative defenses relating to the Plaintiff's alleged comparative fault herein"

In addition, Smith's statutory hearing testimony establishes that he "was an innocent passenger, who cannot be found at fault under any version of how the accident occurred", and he is therefore entitled to "partial summary judgment to the extent of finding that [h]e was not culpable in connection with the accident" (*Hobbs v MTA Bus Co.*, 211 AD3d 471, 472 [1st Dept 2022]).

In opposition, the Transit Defendants conclusorily assert that Smith "has failed to establish he is an innocent passenger of the vehicle free from comparative fault to his accident" (memorandum of law by counsel for the Transit Defendants in opposition to motion ¶ 20). To the extent that the Transit Defendants are arguing that this branch of Smith's motion should be denied because there remains an open question as to whether Patterson was also liable for the accident, this argument is unavailing, as the "[t]he right of an innocent passenger to summary judgment on the issue of whether he or she was at fault in the happening of an accident is not restricted by potential issues of comparative negligence as between two defendant drivers" (*Pinilla v New York City Tr., Auth.*, 122 AD3d 703, 705-06 [2d Dept 2014]). As there is no dispute that Smith was an "innocent passenger[] . . . not at fault in the happening of the accident", he is entitled to summary judgment on the "limited issue" of his lack of culpable conduct (*Ramirez v Elias-Tejada*, 168 AD3d 401, 405 [1st Dept 2019]).

Therefore, the first affirmative defense in the Transit Defendants' answer, alleging culpable conduct by plaintiffs (Smith's exhibit 2 in support of motion [NYSCEF Doc. No. 67] ¶ 8) is stricken as against Smith only; and the first and second affirmative defenses in Patterson's answer, alleging culpable conduct by plaintiffs (Smith's exhibit 3

in support of motion [NYSCEF Doc. No. 68] ¶¶ 10-11) are stricken as against Smith only.

III. Branch of Smith's motion for summary judgment on the issue of liability in his favor against all Defendants

Smith also argues that he should be granted "summary judgment on the issue of collective liability against all of the Defendants . . . because the three Defendants were clearly together 100% at fault for the happening of this accident" (affirmation of counsel for Smith [NYSCEF Doc. No. 65] ¶ 9). Smith contends that the "granting of this innocent passenger portion of the motion will allow Plaintiff to collect interest on the ultimate verdict obtained (while the Defendants bicker about who is to blame for this accident)" (*id.*).

To the extent Smith is also seeking summary judgment in his favor as to liability against Patterson, that branch of the motion is denied.

Although an "innocent passenger" may be found to be "free of comparative negligence," the plaintiff "must still establish a defendant driver's liability under traditional principles of tort liability in order to prevail on the issue of liability against that driver" (*Campbell v Mincello*, 184 AD3d 412 [1st Dept 2020]). Here, Smith has not made any specific argument about how Patterson had negligently operated his vehicle.

The court has considered the parties' various other arguments and finds them to be unavailing.

CONCLUSION & ORDER

Accordingly, upon the foregoing papers, it is hereby **ORDERED** that this motion for summary judgment by plaintiff Robert O. Smith is **GRANTED TO THE EXTENT** that plaintiff Smith is awarded partial summary judgment in his favor on the issue of liability as against defendants New York City Transit Authority and Allan Perez, who are jointly and severally liable; and it is further

ORDERED that the first affirmative defense in the answer by New York City Transit Authority and Allan Perez, alleging culpable conduct by the plaintiffs (Smith's exhibit 2 in support of motion [NYSCEF Doc. No. 67] ¶ 8) and the first and second affirmative defenses in the answer by defendant Thomas Patterson, alleging culpable conduct by plaintiffs (Smith's exhibit 3 in support of motion [NYSCEF Doc. No. 68] ¶¶ 10-11) are hereby stricken as to plaintiff Robert O. Smith only, and the motion is otherwise denied; and it is further

ORDERED that, within 60 days after entry of this decision and order, counsel for defendants New York City Transit Authority and Allan Perez is directed to retrieve the compact disc containing the video footage from IAS Part 21, 80 Centre Street Room **280** and to preserve the video footage intact pending the outcome of any appeal of this

decision and order, or if no appeal is taken, until after the time to appeal from this decision and order has expired.⁷

This constitutes the decision and order of the court.



20250905120518RTSAID3097945DF454E769DE830B81BC8849F

<u>9/5/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

⁷ If the compact disc is not retrieved within 60 days after entry of this decision, court staff may discard the compact disc thereafter.