

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

N.M. v. City of New York

2019 NY Slip Op 02981 (App. Div. 2019) · No. 9045; 350326/12 · Decided April 23, 2019

SUMMARY

The Appellate Division, First Department affirmed an order granting summary judgment to the defendants on state and federal claims for assault, battery, and excessive force. The court held that the officers had probable cause to arrest the plaintiff for disorderly conduct and that the plaintiff failed to present competent evidence raising a factual issue regarding excessive force or the cause of his facial bruising.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Sweeny, J.; Tom, J.; Moulton, J.
JURISDICTION	New York
DECIDED	April 23, 2019
DOCKET	9045; 350326/12
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of the Supreme Court, Bronx County, granting defendants' motion for summary judgment dismissing state and federal claims for assault, battery, and excessive force.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment and whether plaintiffs raised a triable issue of fact concerning excessive or unwarranted police force.
PRECEDENTIAL VALUE	published intermediate appellate decision
PARTIES	N.M., an Infant by his Mother and Natural Guardian Carmen P., et al. v. The City of New York, et al.

TOPICS

- police misconduct
- civil rights
- standard of review
- appellate procedure
- municipal law

PRACTICE AREAS

civil rights

torts

municipal law

QUESTIONS PRESENTED

1. Whether defendants were entitled to summary judgment dismissing the state and federal assault, battery, and excessive-force claims.
2. Whether plaintiff presented competent evidence sufficient to raise a factual issue that the police used excessive or unwarranted force or caused his alleged facial bruising through wrongful conduct.

HOLDINGS

1. Summary judgment dismissing the state and federal assault, battery, and excessive-force claims was proper because plaintiff failed to provide competent proof raising a factual issue that the police force was excessive or that his facial bruising resulted from unwarranted police conduct.

FACTUAL BACKGROUND

Police officers approached two individuals for a stop and inquiry concerning a suspected drug transaction in a known drug location. When the 17-year-old plaintiff cursed, screamed, refused to cooperate, and attracted a crowd, officers arrested him for at least disorderly conduct; he later pleaded guilty. Plaintiff acknowledged resisting attempts to handcuff him and alleged that an officer punched him in the face a second time before he was handcuffed, causing facial bruising.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, granted defendants' motion for summary judgment dismissing the claims. The Appellate Division affirmed the order to the extent appealed from and limited by the briefs.

DISPOSITION

affirmed

CASES CITED

- Wilson v. City of New York, 147 A.D.3d 664 (1st Dep't 2017)
- Koeiman v. City of New York, 36 A.D.3d 451 (1st Dep't 2007), leave to appeal denied, 8 N.Y.3d 814 (2007)

OPINION

PER CURIAM.

N.M. v City of New York (2019 NY Slip Op 02981) N.M. v City of New York 2019 NY Slip Op 02981 Decided on April 23, 2019 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on April 23, 2019 Friedman,

J.P., Sweeny, Tom, Moulton, JJ. 9045 350326/12 [*1]N.M., an Infant by his Mother and Natural Guardian Carmen P., et al., Plaintiffs-Appellants, vThe City of New York, et al., Defendants-Respondents.

Alexander J. Wulwick, New York, for appellants. Zachary W. Carter, Corporation Counsel, New York (Mackenzie Fillow of counsel), for respondents. Order, Supreme Court, Bronx County (Howard H. Sherman, J.), entered on or about February 28, 2018, which, to the extent appealed from as limited by the briefs, granted defendants' motion for summary judgment dismissing the state and federal claims for assault, battery and excessive force, unanimously affirmed, without costs.

The evidence shows that defendant police officers initially approached two individuals for a stop and inquiry regarding a suspected drug transaction in a known drug location. When the 17-year-old infant plaintiff (NM) began to curse and scream at the officers, as well as refuse to cooperate with their instructions, ultimately drawing the attention of a crowd, the police had probable cause to arrest NM for, at minimum, disorderly conduct, to which NM ultimately pled guilty.

NM acknowledged that he resisted the officers' attempts to handcuff him, and that they were only able to handcuff him when an officer allegedly punched him in the face a second time. NM offered no competent proof in the form of expert testimony or otherwise to raise a factual issue as to whether the police force under the circumstances was excessive or that the alleged facial bruising NM incurred was due to unwarranted police conduct (see *Wilson v City of New York*, 147 AD3d 664 [1st Dept 2017]; see also *Koeiman v City of New York*, 36 AD3d 451 [1st Dept 2007], lv denied 8 NY3d 814 [2007]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: APRIL 23, 2019 CLERK