

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)