

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LARRY JACKSON,

Plaintiff,

- against -

MEMORANDUM & ORDER

11-CV-3028 (PKC)

JESUS TELLADO, STANLEY MACNEAR,
JOHN CZULADA, JAMES T. GHERARDI,
RYANN DUNN, ROBERT J. DEFERRARI,
KENNETH BRAUMANN, BEN KURIAN,
PETER BONETA, THOMAS E. REO,
MICHAEL FAILLA, AND BRIAN E.
HEEREY,

Defendants.

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PAMELA K. CHEN, United States District Judge:

On February 3, 2016, after a seven-day trial, the jury returned a verdict on Plaintiff Larry Jackson's claims under 42 U.S.C. § 1983 against New York City Police Department Officers Jesus Tellado, Stanley MacNear, John Czulada, James Gherardi, Ryann Dunn, Robert Deferrari, Kenneth Braumann, Ben Kurian, Peter Boneta, Thomas Reo, Michael Failla, and Brian Heerey (collectively, "Individual Defendants"). The jury determined that Jackson had been falsely arrested and subjected to excessive force, and awarded Jackson \$12,500,000 in compensatory damages, as well as punitive damages against each Defendant in varying amounts.¹

¹ The jury awarded \$300,000 in punitive damages against Tellado; \$300,000 against MacNear; \$275,000 against Czulada; \$150,000 against Gherardi; \$150,000 against Dunn; \$250,000 against Deferrari; \$50,000 against Braumann; \$400,000 against Kurian; \$125,000 against Boneta; \$275,000 against Reo; \$350,000 against Failla; and \$50,000 against Heerey, for a total of \$2,675,000 in punitive damages. (Dkt. 95 ("Verdict Sheet").)

Individual Defendants now move for qualified immunity as to each Defendant and each claim. For the reasons set forth below, Defendants' motion is GRANTED in part and DENIED in part.²

BACKGROUND

The Court assumes the parties' familiarity with the procedural history of this case and the trial record, and discusses them only to the extent they are relevant to the resolution of the instant motions.

I. PROCEDURAL HISTORY

On June 24, 2011, Jackson filed his complaint against the City of New York and 20 John Doe defendants. (Dkt. 1.) After some initial discovery, Jackson filed his Amended Complaint on March 1, 2013, naming Individual Defendants, as well as Officers Patrick D'Onofrio and Robert E. Russo. (Dkt. 30.)³ Defendants moved for summary judgment on August 20, 2013 (Dkt. 56), and the Court granted that motion in part on March 17, 2014, dismissing Defendant D'Onofrio and the City of New York. (Dkt 67.) The parties proceeded to trial on January 25, 2016, but during trial, stipulated to the dismissal of Defendant Russo on February 1, 2016 (dkt. 92), which the Court so ordered the next day.

II. FACTUAL OVERVIEW⁴

² Following the issuance of this Memorandum and Order, judgment will issue, and Defendants will have 28 days in which to file their proposed motion for judgment as a matter of law under Federal Rule of Civil Procedure ("FRCP") 50 and/or for a new trial under FRCP 59. (See 2/4/16 Dkt. Order.)

³ Both in his original and amended complaints, Jackson named multiple John Doe defendants, but Plaintiff's counsel affirmed at the beginning of the trial that no such defendants remained in the case. (1/25/16 Tr. at 61.)

⁴ When a defendant seeks judgment as a matter of law after trial on the basis of qualified immunity, the Court "must view all disputed facts in the light most favorable to...the prevailing

A. Testimony of Plaintiff and Several of His Witnesses⁵

On August 21, 2010, Plaintiff, an off-duty police officer, hosted a party for his daughter's twenty-first birthday at his home. (1/27/16 Tr. 17–18, Jackson.) Late in the evening, partygoers congregating in front of Plaintiff's house were approached by a group of people, including a man who appeared to have a gun. (*Id.* at 23–24; 1/26/16 Tr. 92–93, Strong.) Plaintiff came out of his house to move the group away from his home, but at some point, there was at least one call to the police, placed by Plaintiff's fiancée Charlene Strong, informing them that a man with a gun was outside of their home. (1/26/16 Tr. 14–15, Strong; 1/27/16 Tr. 24, Jackson.)

As Plaintiff returned to his house, two police officers—Defendants Czulada and MacNear—arrived at the home in response to the 911 call. (1/27/16 Tr. 29–31, Jackson.) Plaintiff approached Czulada and MacNear and said to MacNear, “hey, Sarge, I’m MOS” meaning he was a member of the police service. (*Id.* at 36.) While Plaintiff, Czulada, and MacNear were talking outside, Plaintiff's niece, Tiffanie Johnson, ran out from Plaintiff's home and stated that there were people fighting inside, at which point Plaintiff, Czulada, and MacNear all entered the home. (*Id.* at 39; 1/28/16 Tr. 78–79, MacNear.)

When Plaintiff got inside, he saw two of the male party guests, Taimar Bonaparte and Jason Wilkinson, on the floor. (1/27/16 Tr. 39–40, Jackson.) After Plaintiff walked into the kitchen to determine what was going on, he turned around to see Czulada “standing there with

party.” *O'Hara v. City of New York*, 570 Fed. App'x 21, 23 (2d Cir. 2014) (summary order). *See also Zellner v. Summerlin*, 494 F.3d 344, 370 (2d Cir. 2007) (explaining that the district court “*must draw all reasonable inferences in favor of the nonmoving party . . . and . . . must disregard all evidence favorable to the moving party that the jury is not required to believe*”) (quoting *Reeves v. Sanderson Plumbing*, 530 U.S. 133, 150–51 (2000)).

⁵ Plaintiff's trial testimony was substantially corroborated by the testimony of his friends and family members—Taimar Bonaparte, Derrick Collins, Charlene Strong, Quinton Thomas, Tiffanie Johnson, Marilyn Murphy, and Marcus Johnson.

[an] ASP baton held in both hands.” (*Id.* at 41.) Czulada told Plaintiff to “back the fuck up,” to which Plaintiff responded by “put[ting] [his] hands up” and telling Czulada that he (Plaintiff) was a police officer and that it was his house. (*Id.*) According to Plaintiff, Czulada responded by pushing him back with the baton. (*Id.*) Plaintiff lost his balance. (*Id.* at 42.) When he got back up, Plaintiff asked Czulada what he was doing, saying “I’m a cop, too.” (*Id.* at 42.) In response, Czulada punched him in the face. (*Id.*) When Czulada hit him a second time, Plaintiff “grabbed him by his shoulders” to prevent Czulada from hitting him again. (*Id.* at 43.) When Plaintiff let go, Czulada stepped back and tripped over a cooler. (*Id.* at 44.) Plaintiff tried to help him up, at which point Czulada “took another swing” at him. (*Id.* at 45.)

Someone Plaintiff could not see then lifted him up with an ASP baton around his neck. (*Id.* at 46.) Plaintiff later learned that the person was Defendant Kurian. (*Id.* at 105.) Kurian kept telling Plaintiff to relax, and Plaintiff kept responding that he was relaxed, but that he couldn’t breathe. (*Id.* at 47.) Plaintiff and Kurian fell over the arm of the couch onto the couch and onto Iris Strong, Plaintiff’s 79-year-old mother-in-law who was sitting on the couch at that moment and who “passed out.” (1/27/16 Tr. 48-49, 51, Jackson.) While Plaintiff and Kurian were on the couch, Plaintiff felt another officer trying to grab Plaintiff’s hands. (*Id.* at 49.)

Charlene Strong, testified that when she entered the house, she saw Jackson being choked with a baton, and that Jackson’s “eyes [were] rolling to the back of his head.” (1/26/16 Tr. 107–08, Strong.) She testified that people were yelling, “He’s an officer,” “He’s an officer,” “get off of Larry”, and “Why are you choking him?” (*Id.* at 108–09.) Strong observed that none of the officers in the house were trying to intervene, and were “allowing this process to happen.” (*Id.* 112.) Tiffanie Johnson, Plaintiff’s niece, testified that the cops inside were “yoking [Plaintiff] up,” and “attacking him.” (1/29/16 Tr. 18–20, T. Johnson). She testified that one officer

“grabbed his right side, another one grabbed [Plaintiff’s] left side,” and “[a]nother one came behind and choke[d] him.” (*Id.* at 20.) Marcus Johnson, Plaintiff’s nephew, testified that an officer, presumably Kurian, ran in during Plaintiff’s altercation with Czulada, “jumped up and threw his baton around [Plaintiff’s] neck and pretty much choked him with it to bring him down.” (1/29/16 Tr. 85–86, M. Johnson.)

The officers let Plaintiff go, at which point he saw two other officers taking Bonaparte out of the house and slamming him against the trunk of a car. (1/27/16 Tr. 53, Jackson.) Plaintiff went to the front door of his house and, from the doorway, said, “Wait a minute, guys”. Plaintiff was “then...hit in the back of the head with something” by someone he could not see. (*Id.* at 54–55.) In response to being struck in the head, Plaintiff ran out of his house and to the street curb. (*Id.*) He ran past six or seven officers, and knelt down near the curb. (*Id.* at 56.) As Plaintiff went to reach into his pocket to get his ID, officers started hitting him with batons in the back of his legs and on his back, hitting him “upward of 20, 30 times.” (*Id.* at 56–57.) Bonaparte observed “more than ten” officers around Plaintiff in the street, “swinging and hitting [him].” (1/25/16 Tr. 26–27, Bonaparte.) Plaintiff could tell by the pants and shoes of the people hitting him that they were officers. (1/27/16 Tr. 57, Jackson.) Plaintiff lay on his stomach in the street while a semicircle of officers proceeded to hit him with batons and to roll the batons over the back of his ankles. (*Id.* at 58–60.) Two officers were positioned with their knees on his back, while the officers tried to get his arms. (*Id.* at 60.) One officer was poking him in the side with a baton and kicking him, saying “give me your arm, stop resisting me, give me your arm.” (*Id.*) Plaintiff told the officer that he could not give him his arms because they were underneath him and there was too much weight on his back. (*Id.* at 61.)

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