

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| HECTOR GARCIA ORTIZ, | : | 15cv2206 (DLC) |
| | : | |
| Plaintiff, | : | <u>OPINION & ORDER</u> |
| -v- | : | |
| | : | |
| THE CITY OF NEW YORK, POLICE OFFICER | : | |
| EDWIN VAZQUEZ, AND POLICE OFFICER | : | |
| STEPHANIE HANNA, | : | |
| | : | |
| Defendants. | : | |
| | : | |
| ----- | X | |

APPEARANCES:

For the plaintiff:
Ameer Benno
410 E. Jericho Turnpike
Mineola, NY 11501

For the defendants:
Melanie Speight
Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

DENISE COTE, District Judge:

This 42 U.S.C. § 1983 case was tried to verdict before a jury in December 2017. At the conclusion of the four-day trial, the jury returned a mixed verdict. The jury found in favor of defendants with respect to the plaintiff's unlawful seizure claim. The jury found in favor of plaintiff with respect to the excessive force claim, and awarded the plaintiff \$118,000 in compensatory damages. Defendants have moved for post-verdict

relief. For the following reasons, judgment as a matter of law is entered in the defendants' favor.

BACKGROUND

Plaintiff Hector Garcia Ortiz ("Ortiz") commenced this action on March 24, 2016 against the City of New York ("City") and John Does 1-5. Defendants Officer Edwin Vazquez ("Vazquez") and Officer Stephanie Hanna ("Hanna") were named in Ortiz's Amended Complaint, filed on March 21, 2006. He alleged claims of false arrest and imprisonment in violation of 42 U.S.C. § 1983 and New York law, the use of excessive force in violation of 42 U.S.C. § 1983, assault and battery in violation of New York laws and negligence and gross negligence. On November 30, 2016, summary judgment was granted in favor of defendants as to the plaintiff's claims of negligence and his claim of excessive force against Hanna. At a pretrial conference held on July 6, 2018, the parties agreed that the City was a defendant only with respect to respondeat superior liability, if applicable. Trial began on December 11, 2017, and the case was submitted to the jury on December 14. Ortiz withdrew his battery claim prior to the jury's deliberations.

At trial, the plaintiff asked the jury to accept the following version of events.¹ He had had five or six beers at a friend's house on June 1, 2014. As he was walking alone on his way home in the early evening, Vazquez stared at him intently. Ortiz walked up to Vazquez, held up his hands and shouted "what's happening" at the officer.

As Ortiz walked away, Vazquez viciously attacked him from behind without warning. Vazquez grabbed his right hand, twisting it behind his back, and ferociously kicked at the inside of his right knee, cracking a knee bone and sending Ortiz to the ground. Vazquez then descended on Ortiz, sitting on his back, grinding Ortiz's face into the pavement and driving his knee into Ortiz's back. Vazquez then tightly handcuffed Ortiz, wrenching his wrist. Hanna and Vazquez called for an ambulance and sent Ortiz to St. Luke's Hospital. He contends that surgery will be required to mend a medial meniscus tear in his knee, for his back and his wrist. He may also need knee replacement surgery.

The hospital records reflect that Ortiz was ambulatory when he arrived, but intoxicated, agitated, abusive, and a danger to hospital staff. Hospital staff sedated Ortiz and treated him for his intoxication. The chief complaint on his triage notes

¹ This version of events is based on Ortiz's testimony at trial.

from his arrival at St. Luke's on June 1 was "intox." The next day, after he was initially set to be discharged from the hospital, a tibial plateau fracture injury to his knee was discovered after he complained of pain as he walked. He was later discharged with instructions to "not put any weight" on his left leg, which had been bound in a cast. The medical records do not reflect any injury to the knee's meniscus, to the back, or to the wrist.

The two defendant officers, Hanna and Vazquez, provided the jury with an entirely different description of the events of June 1. Hanna and Vazquez are patrol officers and were handing out community safety fliers to store owners along St. Nicholas and Lenox Avenues in upper Manhattan, seeking information about a recent BB gun shooting. Over the course of forty or so minutes they encountered Ortiz four different times in a two or three block stretch of their route. Vazquez first saw Ortiz emerging from a liquor store. Twice the officers saw Ortiz slumped against the side of a building with a companion standing next to him. Each time they approached Ortiz and told him to get up and move along. They saw his companion help him get up, but did not watch as they moved away. They never saw him

walking steadily on his own. Finally, they saw Ortiz lying down² and his companion walking away further down the sidewalk, saying "I have had enough."

When Officer Hanna approached Ortiz on this final occasion, she discovered that he was highly intoxicated. When she spoke to him, he appeared to be sleeping, but as he livened, she realized that he was heavily intoxicated: he was incoherent and smelt of alcohol. When defendants told Ortiz to get up off the ground, Ortiz became more and more agitated and angry. He got up, without assistance, and tried to stagger away. At some point, Hanna called for an ambulance. She decided to send Ortiz to a hospital for his own safety and the safety of others. Hanna could not recall if she called the ambulance immediately after perceiving Ortiz's level of intoxication, or if she did so after he attempted to walk away from her and Vazquez, staggering. Hanna stood in front of Ortiz to prevent him from leaving. Vazquez stood on Ortiz's other side, so that Ortiz was between the two officers. Ortiz began to stumble in circles in between the officers, getting angrier and angrier, hurling abusive comments at them and at himself. At that point, Hanna

² Hanna testified that they found Ortiz lying on the street, right off the sidewalk pavement, between two parked cars. Vazquez testified that they found him lying on the sidewalk pavement.

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