

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2009

(Argued: April 15, 2010

Decided: January 31, 2011)

Docket Nos. 09-3064-cv(L), 09-3217-cv(XAP)

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JOSEPH CACERES,

Plaintiff-Appellant-Cross-Appellee,

- v. -

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, POLICE
OFFICER MICHAEL BARRY, (SHIELD NO. 1810), SERGEANT K.
COTRELL, (SHIELD NO. 304), POLICE OFFICER M. LYDON, (SHIELD
NO. 1585), POLICE OFFICER J. MALICE, (SHIELD NO. 2442),
POLICE OFFICER A. PINIELLO, (SHIELD NO. 1856), POLICE
LIEUTENANT ROENZO SANGIORGI, (SHIELD NO. 166), POLICE
OFFICER TRUGLIO, (SHIELD NO. 2105), individually and in
their official capacities,

Defendants-Appellees-Cross-Appellants,

JOHN DOE, 1-10 individually and in their official capacity,
the name John Doe being fictitious, as the true names are
presently unknown, JANE DOE, 1-10 individually and in their
official capacity, the name Jane Doe being fictitious, as
the true names are presently unknown,

Defendants.

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Before: JACOBS, Chief Judge, McLAUGHLIN and SACK,
Circuit Judges.

1 The Port Authority of New York and New Jersey detained
2 Plaintiff Caceres for two days on a warrant erroneously
3 attributed to him. A jury assessed false-arrest damages at
4 \$10,000, joint and several, against the Port Authority and
5 one of its officers. The United States District Court for
6 the Southern District of New York (Koeltl, J.) entered a
7 judgment, against the Port Authority in the amount of the
8 verdict, and in favor of the officer as a matter of law on
9 the ground of qualified immunity. Caceres appeals the
10 qualified immunity ruling; the Port Authority cross-appeals
11 on the ground that absent liability of any of its officers,
12 vicarious liability does not lie. We affirm the judgment in
13 favor of the officer; we vacate the judgment against the
14 Port Authority and remand to dismiss that claim for lack of
15 jurisdiction.

16 BRETT HARRIS KLEIN, Leventhal &
17 Klein, LLP, Brooklyn, NY, for
18 Plaintiff-Appellant-Cross-
19 Appellee.

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21 SCOTT CHARLES OCCHIOGROSSO, Port
22 Authority of New York and New
23 Jersey, New York, NY, for
24 Defendants-Appellees-Cross-
25 Appellants.

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1 DENNIS JACOBS, Chief Judge:

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4 Plaintiff-Appellant-Cross-Appellee Joseph Caceres was a
5 painter on the George Washington Bridge, which is maintained
6 and operated by the Port Authority of New York and New
7 Jersey ("Port Authority"). After he parked near his work
8 site without the requisite permit, his car was impounded at
9 the Port Authority police station in New Jersey. When he
10 went to pick up his car, a routine computer search of his
11 name and date of birth showed that Caceres had a New York
12 State Identification ("NYSID") number, which is a
13 (supposedly) unique designation assigned to each arrestee by
14 the New York State Division of Criminal Justice Services.
15 The search also linked Caceres to a "John Doe" bench
16 warrant. Caceres was detained for two days, until the Port
17 Authority supervisor, Defendant-Appellee-Cross-Appellant
18 Roenzo Sangiorgi, determined the warrant was for another
19 person who was erroneously issued the same NYSID number as
20 Caceres.

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Caceres sued Defendant-Appellee-Cross-Appellant Port
Authority and numerous Port Authority officers for, inter
alia, false arrest under state law and for violation of his
federal constitutional rights under 42 U.S.C. § 1983. A

1 jury assessed false-arrest damages at \$10,000, joint and
2 several, against the Port Authority and Sangiorgi. The
3 United States District Court for the Southern District of
4 New York (Koeltl, J.) entered a judgment, against the Port
5 Authority in the amount of the verdict, and in favor of
6 Sangiorgi as a matter of law on the ground of qualified
7 immunity. For some reason, Caceres (not content with a
8 damages award that was fully recoverable from the Port
9 Authority) appealed the qualified immunity ruling; the Port
10 Authority, which had been content to pay the judgment, then
11 cross-appealed on the ground that absent liability of any of
12 its officers, vicarious liability does not lie. We affirm
13 the judgment in favor of the officer, and vacate the
14 judgment against the Port Authority and remand to dismiss
15 that claim for lack of jurisdiction.

16
17 **I**

18 Caceres challenges the qualified immunity ruling under
19 both federal and state law. We review a district court's
20 grant of judgment as a matter of law de novo, applying the
21 same standards as the district court. Black v. Finantra
22 Capital, Inc., 418 F.3d 203, 208 (2d Cir. 2005). Judgment

1 as a matter of law is appropriate when "a party has been
2 fully heard on an issue" and "a reasonable jury would not
3 have a legally sufficient evidentiary basis to find for the
4 party on that issue." Fed. R. Civ. P. 50(a)(1). In our
5 review, we "consider the evidence in the light most
6 favorable to the party against whom the motion was made" and
7 "give that party the benefit of all reasonable inferences
8 that the jury might have drawn in his favor from the
9 evidence." Tolbert v. Queens Coll., 242 F.3d 58, 70 (2d
10 Cir. 2001) (quoting Smith v. Lightning Bolt Prods., Inc.,
11 861 F.2d 363, 367 (2d Cir. 1988)). Federal and state law
12 entitlements are considered separately.

13
14 **A**

15 On the federal false arrest claim, Sangiorgi enjoys
16 qualified immunity if "it was objectively reasonable for the
17 officer to believe that probable cause existed" or if
18 "officers of reasonable competence could disagree on whether
19 the probable cause test was met." Robison v. Via, 821 F.2d
20 913, 921 (2d Cir. 1987).

21 At the threshold, Caceres argues that the warrant
22 itself is facially invalid because it does not conform to

1 the New York Criminal Procedure Law. However, Sangiorgi was
2 an officer in a different jurisdiction, out of the thousands
3 of jurisdictions in the United States, all of which may
4 issue bench warrants with various characteristics and
5 requirements. Similarly, Caceres argues that Sangiorgi
6 failed in other respects to follow proper police procedures.
7 Assuming that Sangiorgi erred, error is what is indulged by
8 qualified immunity.

9 More particularly, Caceres emphasizes the several
10 physical differences between himself and the descriptive
11 particulars in the warrant. Height, weight and age were not
12 grossly disparate, and some other features matched.¹ But
13 Caceres is a light-skinned Hispanic, whereas the warrant
14 specified a black man of dark complexion.

15 A reasonable officer could have concluded nevertheless
16 that the warrant was for Caceres. Complexion varies within
17 a given race classification, and the descriptive terms in

¹ Caceres's hair color matched the description on the warrant; his dark eye color was a near match (black, compared with brown on the warrant). The height discrepancy was two inches, the weight was within twenty pounds, and the age discrepancy was about five years. The age difference would not necessarily be apparent to the eye, but an officer might (or might not) have noticed that the birth date in the warrant did not match the birth date that Caceres gave, or had on his license.

1 the warrant reflected one person's subjective classification
2 at one point in time.² A Port Authority officer might
3 reasonably assume that the skin color and race information
4 were entered incorrectly--particularly since height, weight,
5 age, hair color and eye color were either accurate or within
6 bounds.

7 Far more implausible was the actual explanation for the
8 confusion: that two individuals were erroneously associated
9 with the same NYSID number. That is so rare (if not unique)
10 that it was unheard-of by the testifying officers. A
11 reasonable officer could therefore have concluded that the
12 "warrant hit" conferred probable cause notwithstanding an
13 incompatible physical description, reasoning that a false
14 hit from the historically reliable recordkeeping system--
15 organized by NYSID number--is at least as rare as error in
16 the physical description fields. Cf. United States v.
17 Santa, 180 F.3d 20, 27 (2d Cir. 1999) (concluding that
18 arresting officers' reliance on historically reliable
19 warrant recording system was objectively reasonable). Three
20 officers of the New York City Police Department came to the

² Uncontroverted testimony by Sangiorgi established that the race and skin color information was based on observations by the arresting officer. Trial Tr. at 660-61.

1 same conclusion: Caceres had been detained three times
2 before on the basis of the same bench warrant. See Caceres
3 v. Port Auth. of N.Y. & N.J., 646 F. Supp. 2d 412, 418
4 (S.D.N.Y. 2009). Caceres further argues that he professed
5 innocence and explained to the Port Authority officers that
6 the warrant was a mistake; but police are not bound to
7 credit such protestations.

8 Accordingly, Sangiorgi is entitled to qualified
9 immunity on the federal false arrest claim.

10
11 **B**

12 On the state law false arrest claim, Sangiorgi's
13 liability is governed by the New Jersey Tort Claims Act
14 ("NJTCA"). See N.J.S.A. § 59:3-1(a). Although the NJTCA
15 provides a statutory "good faith" exception--a variant of a
16 qualified immunity defense--the exception is unavailable in
17 claims for false arrest or false imprisonment. See § 59:3-
18 3. However, common law defenses that existed when the NJTCA
19 was enacted were not preempted. See Fielder v. Stonack, 141
20 N.J. 101, 117 (1995) ("When liability is established under
21 the [NJTCA], it is still subject to immunity specified in
22 the Act as well as any common-law immunity which predated

1 *the Act.*" (emphasis added)).

2 In deciding qualified immunity, the district court
3 assumed that the New Jersey common law standard is
4 coextensive with federal law, citing DelaCruz v. Borough of
5 Hillsdale, 183 N.J. 149 (2005). See Caceres, 646 F. Supp.
6 2d at 426; Joint Appendix at 489, 496. DelaCruz is
7 ambiguous as to the availability of qualified immunity under
8 New Jersey common law; but the court relied on the parties'
9 own readings of the case, which (though divergent) were
10 consistent in material respects.³ Under these
11 circumstances, we accept the parties' consensus. Cf. Walter
12 E. Heller & Co. v. Video Innovations, Inc., 730 F.2d 50, 53
13 (2d Cir. 1984) ("The parties by their acquiescence . . . may
14 induce the . . . court to assume that foreign law is similar
15 to that of the forum."). We therefore need not decide what

³ There is a slight disagreement about the scope of the purported DelaCruz standard. The parties agree that it is an objective reasonableness standard; Caceres suggests it is parallel to the federal version, but the Port Authority argues it is only an objective reasonableness standard, and not the disjunctive two part test for the federal defense. The disagreement is irrelevant. Because it was objectively reasonable for Sangiorgi to believe that probable cause existed, he is entitled to qualified immunity under either party's interpretation of the standard.

1 New Jersey law would be if it were clear, which it is not.⁴

2 Sangiorgi is entitled to qualified immunity on the
3 state law false arrest claim for the same reasons he enjoys
4 qualified immunity on the federal claim. (And the state law
5 claim would be insubstantial in any event.⁵)

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II

8 The Port Authority argues that it cannot be held
9 vicariously liable for the conduct of an employee (such as
10 Sangiorgi) who has successfully established immunity.⁶ As a

⁴ Compare, e.g., N.J.S.A. § 59:3-3 (excluding false arrest claims from good faith defense for public employees), with Visidor Corp. v. Cliffside Park, 48 N.J. 214, 221 (1966) (“[T]he nonliability of individual public officials for damages ensuing upon their good faith exercise of judgment and discretion in the performance of their duties, has long been recognized in our State.”). See generally Tice v. Cramer, 133 N.J. 347, 355-56 (1993) (“Liability of the public employee . . . is subject to the immunities of the [NJTCA] and the common law.”).

⁵ Even if qualified immunity for the state law claim were unavailable, Caceres’s damages would be severely limited at best: The NJTCA prohibits damages for pain and suffering in the absence of substantial bodily harm, reflecting the policy choice that “in view of the economic burdens presently facing public entities a claimant should not be reimbursed for non-objective types of damages . . . except in aggravated circumstances.” N.J.S.A. § 59:9-2(d) & cmt.; see also Delacruz, 183 N.J. at 164. Caceres makes no claim of substantial bodily harm.

⁶ Caceres argues that the Port Authority forfeited this argument by not raising it in its Rule 50 motions before the

1 preliminary matter, we have an independent obligation to
2 consider our subject matter jurisdiction to hear this claim
3 even in the absence of a challenge from any party. See Dean
4 v. Blumenthal, 577 F.3d 60, 64 (2d Cir. 2009).

5 The Port Authority, a bi-state agency created by a
6 compact between New York and New Jersey, enjoyed sovereign
7 immunity until 1951, when New York and New Jersey consented
8 to suits against it in limited circumstances. See Bunk v.
9 Port Auth. of N.Y. & N.J., 144 N.J. 176, 183 (1996). The
10 Port Authority's statutory immunity was waived by identical
11 New York and New Jersey statutes that required a sixty-day
12 notice of claim and commencement of suit within one year from
13 the date of the accrual of the cause of action. See N.J.S.A.
14 § 32:1-163; N.Y. Unconsol. Law § 7107. These requirements
15 are jurisdictional. See Matthews v. Port of N.Y. Auth., 163
16 N.J. Super. 83, 85 (Law Div. 1978), aff'd, 171 N.J. Super. 38
17 (App. Div. 1979); Pinckney v. Jersey City, 140 N.J. Super.
18 96, 100-03 (Law Div. 1976) ("It is a firmly established rule
19 in American jurisprudence that . . . provisions which are
20 conditions which the sovereign attaches to the waiver of

district court. See Provost v. City of Newburgh, 262 F.3d
146, 161 (2d Cir. 2001). Because of the jurisdictional
issue discussed infra, the forfeiture issue is irrelevant.

1 immunity are jurisdictional.”). The failure to satisfy these
2 conditions “will result in withdrawal of defendant’s consent
3 to suit and compels the dismissal of the action for lack of
4 subject matter jurisdiction.” Lyons v. Port Auth. of N.Y. &
5 N.J., 643 N.Y.S.2d 571, 571-72 (1st Dep’t 1996).

6 This analysis is consistent with Hess v. Port Auth.
7 Trans-Hudson Corp., 513 U.S. 30 (1994), in which plaintiffs
8 sought damages from a wholly-owned subsidiary of the Port
9 Authority⁷ under the Federal Employers’ Liability Act
10 (“FELA”), 45 U.S.C. § 51 et seq. The claim was brought
11 within the three-year time limit set by FELA but beyond the
12 one-year limit specified by the New York and New Jersey
13 consent-to-suit statutes. Relying mainly on the attenuation
14 between the Port Authority’s finances and the fiscs of New
15 York and New Jersey, the Court held that the Port Authority
16 lacked *Eleventh Amendment* sovereign immunity from *federal*
17 statutory claims. Hess, 513 U.S. at 49-52. But this holding
18 does not bear upon the validity of conditions for waiving
19 sovereign immunity over claims arising under *state law*. See

⁷ In Hess, the Supreme Court treated the subsidiary, PATH (Port Authority Trans-Hudson Corporation), as equivalent to the Port Authority for purposes of sovereign immunity because it is wholly owned. 513 U.S. at 33-35.

1 Mullen v. Port Auth. of N.Y. & N.J., 100 F. Supp. 2d 249, 254
2 n.4 (D.N.J. 1999) ("Hess did not reach the question of
3 whether state law claims could be barred for failure to
4 comply with the commencement of suit and notice
5 requirements."); Recreation World, Inc. v. Port Auth. of N.Y.
6 & N.J., No. 96 Civ. 5549, 1998 WL 107362, at *5 (S.D.N.Y.
7 Mar. 9, 1998).

8 The vicarious liability in this case, if any, must arise
9 from state law because the jury found that the Port Authority
10 was not liable under § 1983 for failure to train, the only
11 basis on which Caceres sought to hold the Port Authority
12 liable under federal law. See Caceres, 646 F. Supp. 2d at
13 424 n.10; see also Monell v. Dep't of Soc. Servs., 436 U.S.
14 658, 691 (1978) (holding municipalities cannot be liable
15 under § 1983 on vicarious liability theory); Raysor v. Port
16 Auth. of N.Y. & N.J., 768 F.2d 34, 38 (2d Cir. 1985)
17 (applying Monell rule to Port Authority). Hess therefore has
18 no impact on whether the jurisdictional requisites have been
19 satisfied for Caceres's state law claim.

20 Caceres's claim accrued when he was released from
21 custody around midnight on August 5-6, 2004. He filed his
22 complaint on February 27, 2006, more than one year afterward.

1 The district court therefore lacked subject matter
2 jurisdiction to consider the claim. Although this
3 jurisdictional issue was not raised by either party or the
4 district court, it cannot be waived and dismissal is
5 mandatory. See United Food & Commercial Workers Union, Local
6 919 v. CenterMark Props. Meriden Square, Inc., 30 F.3d 298,
7 301 (2d Cir. 1994).

8
9 For the foregoing reasons, the judgment in favor of
10 Sangiorgi based on qualified immunity is affirmed, the
11 judgment against the Port Authority is vacated, and the case
12 is remanded to the district court with instructions to
13 dismiss the claim against the Port Authority for lack of
14 jurisdiction.