

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

3
4 August Term, 2015

5
6 (Argued: October 7, 2015 Decided: March 8, 2016)

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8 Docket Nos. 14-2475-cv (Lead) 14-2512-cv (XAP)
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13 Axel Rentas,

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15 *Plaintiff-Appellant-Cross-Appellee,*

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17 v.

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19 Captain John Ruffin,

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21 *Defendant-Appellee-Cross-Appellant,*

22
23 The City of New York, Correction Officer Diana Baker, Correction Officer
24 Kevin Parker, Correction Officer Mills Charles, Deputy Warden Elisio Perez,
25 Captain Sharon Clayton, Captain Darryll Lago, Correction Officer George
26 Ruppel, Deputy Warden Walter Nin,

27
28 *Defendants-Appellees,*

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30 Correction Officer Richard Serrano, Correction Officers John Doe, #1-10,

31
32 *Defendants.**
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* The Clerk of the Court is respectfully directed to amend the official caption as set forth above.

1 Before: PARKER, LOHIER, and CARNEY, *Circuit Judges*.

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3 Axel Rentas appeals, and Captain John Ruffin cross-appeals, from a
4 judgment of the District Court for the Southern District of New York
5 (Hellerstein, J.). Rentas, a former inmate on Rikers Island, claimed that the
6 Rikers staff used excessive force against him and then fabricated evidence,
7 leading to his prosecution and prolonged detention. The District Court
8 granted the defendants summary judgment on Rentas's malicious
9 prosecution claim, but allowed his fair trial, excessive force, and intentional
10 infliction of emotional distress claims to proceed to trial. The jury found the
11 defendants liable for intentional infliction of emotional distress and Captain
12 Ruffin individually liable for violating Rentas's right to a fair trial and for
13 using excessive force. On appeal, Rentas challenges the grant of summary
14 judgment on his malicious prosecution claim and argues that the District
15 Court erred at trial when it excluded certain allegedly false reports prepared
16 by the defendants. On cross-appeal, Captain Ruffin argues that he was
17 entitled to judgment as a matter of law on Rentas's claim of intentional
18 infliction of emotional distress. We **AFFIRM** in part (as to the claim of
19 intentional infliction of emotional distress), **VACATE** in part (as to the
20 malicious prosecution, fair trial, and excessive force claims), and **REMAND**
21 for further proceedings consistent with this opinion.

22
23 JOSHUA P. FITCH, Cohen & Fitch LLP,
24 New York, NY, *for Plaintiff-Appellant-*
25 *Cross-Appellee*.

26
27 ELIZABETH S. NATRELLA (Pamela Seider
28 Dolgow, *on the brief*), *for Zachary W.*
29 *Carter, Corporation Counsel of the City*
30 *of New York, New York, NY, for*
31 *Defendant-Appellee-Cross-Appellant and*
32 *Defendants-Appellees*.

33
34 LOHIER, *Circuit Judge*:

35 Axel Rentas appeals, and Captain John Ruffin cross-appeals, from a
36 judgment of the United States District Court for the Southern District of New
37 York (Hellerstein, J.). Rentas, a former inmate on Rikers Island, sued several

1 correction officers and prison officials along with the City of New York,
2 claiming that the officers used excessive force against him and then fabricated
3 evidence, leading to his prosecution and prolonged detention. Because we
4 conclude that the District Court committed a significant evidentiary error by
5 excluding certain reports prepared by the officers, we **VACATE** in part and
6 **REMAND** for further proceedings consistent with this opinion. As for
7 Captain Ruffin's cross-appeal, in which he argues that he was entitled to
8 judgment as a matter of law on Rentas's claim for intentional infliction of
9 emotional distress, we **AFFIRM**.

10 **BACKGROUND**

11 This case arises from a July 12, 2007 altercation between Rentas, then an
12 inmate on Rikers Island, and several members of the correctional staff.
13 Rentas was serving a misdemeanor sentence and was scheduled to be
14 released in less than three weeks. Correction Officer Kevin Parker ordered
15 Rentas to move to a new bed, but Rentas refused, asking to speak with
16 Parker's supervisor. A fight started when Officer Parker attempted to move
17 Rentas's belongings from near his bed. Another officer called for backup.
18 The fight escalated when Captain Ruffin and other correctional staff arrived.

1 The officers eventually subdued Rentas, handcuffed him, and carried him
2 away.

3 The parties disagree about who initiated the fight, the degree to which
4 Rentas resisted, and whether he was injured before or after the Rikers staff
5 placed him in handcuffs. According to Rentas, Officer Parker grabbed him
6 when he refused to change beds and then fell on purpose, feigning injury.
7 When Captain Ruffin arrived, he immediately placed Rentas in handcuffs.
8 Rentas claims that Captain Ruffin and other correction officers then
9 proceeded to punch, kick, and pepper spray him while he was handcuffed.
10 As they carried him away, they purposefully dropped him on his face. And
11 after arriving at intake, Deputy Wardens Walter Nin and Elisio Perez
12 allegedly joined in, beating Rentas while he remained in handcuffs. Rentas
13 suffered a fractured eye socket, bruises and abrasions all over his body, and
14 bleeding in his lungs. Several of the correction officers involved in the
15 incident also complained of injuries and received medical treatment. Later
16 that month, Rentas filed a notice of claim with the City alleging it was
17 responsible for violations of his civil rights and related claims.

1 As part of an internal New York City Department of Corrections
2 investigation into the incident, several of the correctional staff — Captains
3 Ruffin, Darryll Lago, and Sharon Clayton, and Officers Diana Baker, Kevin
4 Parker, and George Ruppel — prepared reports of the incident, which were
5 ultimately transmitted to an Assistant District Attorney in Bronx County.

6 Shortly thereafter, Rentas was charged in Bronx County Criminal Court with
7 multiple counts of felony assault and detained for three years before being
8 acquitted at trial.

9 After his acquittal, Rentas sued the correctional staff involved in the
10 July 2007 altercation, along with the City of New York, claiming the
11 defendants were liable for the use of excessive force, assault and battery,
12 malicious prosecution, the denial of his right to a fair trial, intentional
13 infliction of emotional distress (“IIED”), and the failure to intercede to protect
14 him from the violation of his constitutional rights. On summary judgment,
15 Rentas claimed that the reports prepared by the correctional staff were false
16 and had prompted the prosecution. The District Court dismissed Rentas’s
17 malicious prosecution claim, reasoning that the Bronx County “prosecutors
18 [had] exercised an independent decision to prosecute based on . . . evidence of

1 the officers' injuries and the statements of other inmates who claimed that
2 [Rentas] started the altercation." It refused to dismiss Rentas's IIED claim,
3 however, explaining that his notice of claim satisfied the requirements of New
4 York's General Municipal Law. The parties proceeded to trial on all of the
5 remaining claims. At trial, Rentas sought to admit the officers' use-of-force
6 reports and other documents that the defendants prepared and later provided
7 to the Bronx District Attorney's office. Although the District Court admitted
8 several of the reports, it excluded five of them as inadmissible hearsay.
9 During a jury charge conference, Rentas objected to the District Court's
10 proposed instruction to the jury that it could award Rentas nominal damages
11 for his fair trial and excessive force claims; he also challenged the District
12 Court's refusal to instruct the jury on assault and battery under New York
13 State law in connection with the excessive force claim.

14 The jury found Captain Ruffin individually liable for denying Rentas's
15 right to a fair trial, subjecting him to excessive force, and failing to intercede,
16 and all the defendants liable for IIED. It awarded Rentas \$67,500 in
17 compensatory damages for the IIED claim, but only nominal damages for the
18 fair trial, excessive force, and failure to intercede claims.

1 This appeal followed.

2 DISCUSSION

3 On appeal, Rentas argues that the District Court erred by dismissing his
4 malicious prosecution claim on summary judgment and excluding the
5 officers' reports from evidence. We agree and therefore vacate in part the
6 District Court's judgment and remand for a new trial on the malicious
7 prosecution, excessive force, failure to intercede, and fair trial claims. Captain
8 Ruffin cross-appeals, arguing that he was entitled to judgment as a matter of
9 law on Rentas's IIED claim. We are not persuaded, however, that the jury's
10 verdict on the IIED claim should be disturbed and therefore affirm the
11 District Court's judgment as to that claim.

12 1. Malicious Prosecution

13 We turn first to the District Court's dismissal of Rentas's malicious
14 prosecution claim. We review the District Court's grant of summary
15 judgment de novo, construing all evidence in the light most favorable to the
16 non-moving party. Ruggiero v. County of Orange, 467 F.3d 170, 173 (2d Cir.
17 2006). Summary judgment should be affirmed only when there is no genuine

1 dispute as to a material fact and the movant is entitled to judgment as a
2 matter of law. Fed. R. Civ. P. 56(a).

3 In order to prevail on his malicious prosecution claim, Rentas was
4 required to show the following: “(1) the defendant initiated a prosecution
5 against plaintiff, (2) without probable cause to believe the proceeding can
6 succeed, (3) the proceeding was begun with malice[,] and[] (4) the matter
7 terminated in plaintiff’s favor.” Cameron v. City of New York, 598 F.3d 50, 63
8 (2d Cir. 2010) (quoting Ricciuti v. N.Y.C. Transit Auth., 124 F.3d 123, 130 (2d
9 Cir. 1997)). Here, the defendants initiated a prosecution against Rentas and
10 the matter terminated in his favor.

11 But the District Court concluded that Rentas could not prove the
12 second element of the claim – namely, the absence of probable cause – and
13 granted summary judgment on that basis. In arriving at that conclusion, the
14 court relied on evidence that the Bronx District Attorney made a subsequent,
15 independent decision to prosecute Rentas that was supported by probable
16 cause and untainted by the officers’ allegedly false reports. “[A] grand jury
17 indictment gives rise to a presumption that probable cause exists and a claim
18 for malicious prosecution . . . thereby is defeated.” McClellan v. Smith, 439

1 F.3d 137, 145 (2d Cir. 2006). “[T]he presumption may be rebutted by evidence
2 of . . . wrongful acts on the part of police,” including “fraud, perjury, [or] the
3 suppression of evidence.” Id. (quoting Colon v. City of New York, 60 N.Y.2d
4 78, 83 (1983)). For example, when an “officer provide[s] false information to a
5 prosecutor, what prosecutors do subsequently has no effect whatsoever on
6 the . . . officer’s initial, potentially tortious behavior.” Cameron, 598 F.3d at
7 63. But if the prosecution relied on independent, untainted information to
8 establish probable cause, a complaining official will not be responsible for the
9 prosecution that follows. See Townes v. City of New York, 176 F.3d 138, 147
10 (2d Cir. 1999). In that situation, “the chain of causation between a police
11 officer’s unlawful arrest and a subsequent conviction and incarceration
12 [would be] broken by the intervening exercise of [the prosecutor’s]
13 independent judgment.” Id.

14 In this case, Captain Ruffin argues that probable cause arose from
15 independent, untainted information in the form of testimony of other Rikers
16 inmates. As part of its investigation, the Department of Corrections
17 interviewed and obtained statements from inmates who witnessed the
18 altercation. Although the defendants suggest that these statements were

1 themselves included in the package of documents provided to the District
2 Attorney's office, our review of the record on summary judgment leads us to
3 conclude that the statements were merely quoted in an investigation report
4 prepared by one of the defendants. According to that report, one inmate
5 allegedly said that he "saw a fellow inmate and [Officer] Parker fighting
6 because [Officer] Baker told him to move to the front. He did not listen so
7 [Officer] Parker moved his stuff[,] and the inmate hit him with a punch."
8 Joint App'x 317. A second inmate was reported to have stated that he "saw
9 the inmate throw many punches at [O]fficer Parker. The inmate assaulted
10 [O]fficer Parker." Id. It is not clear to us that these statements constitute
11 independent, untainted information upon which a prosecution may rely to
12 break the chain of causation if they are contained in one of the allegedly false
13 reports prepared and supplied by the defendants. Our doubts are reinforced
14 by the eventual trial testimony of the Assistant District Attorney who drafted
15 the criminal complaint against Rentas, which suggests that she did not rely
16 directly on the statements of inmates before seeking to indict Rentas. The
17 District Court therefore erred in concluding, based on the summary judgment

1 record before it, that the inmates' statements provided an independent basis
2 for probable cause separate from the allegedly false reports.

3 In dismissing the malicious prosecution claim, the District Court also
4 faulted Rentas for failing to produce independent evidence that the
5 defendants lied to prosecutors and for relying instead on his own deposition
6 testimony to contradict the defendants' version of events. This was also error.
7 At summary judgment, Rentas was entitled to rely on his own testimony to
8 establish his malicious prosecution claim. See Rivera v. Rochester Genesee
9 Reg'l Transp. Auth., 743 F.3d 11, 20 (2d Cir. 2014) (“[D]istrict courts should
10 not engage in searching, skeptical analyses of parties’ testimony in opposition
11 to summary judgment.” (quotation marks omitted)). In any event, Rentas did
12 offer evidence beyond his own testimony, including photographs of his
13 injuries following the incident, which did not appear to show any bruises or
14 abrasions on his hands despite the defendants’ claims that he repeatedly
15 punched members of the staff so violently that they required immediate
16 medical treatment. See Boyd v. City of New York, 336 F.3d 72, 77 (2d Cir.
17 2003) (reversing summary judgment where the plaintiff offered a competing
18 account of the facts supported by only a single document).

1 Lastly, Captain Ruffin argues that the District Court properly dismissed
2 the malicious prosecution claim because evidence of actual malice was
3 lacking. But actual malice can be inferred when a plaintiff is prosecuted
4 without probable cause. Manganiello v. City of New York, 612 F.3d 149, 163
5 (2d Cir. 2010); Boyd v. City of New York, 336 F.3d 72, 78 (2d Cir. 2003) (“A
6 lack of probable cause generally creates an inference of malice.”). According
7 to Rentas’s sworn testimony, the defendants attacked him and later conspired
8 to hide the assault by initiating a prosecution without probable cause that
9 extended his remaining time in prison from three weeks to three years. A
10 reasonable jury could infer that the defendants acted with actual malice based
11 on these facts, thus precluding summary judgment. For these reasons, we
12 vacate the District Court’s dismissal of the malicious prosecution claim and
13 remand for further proceedings.

14 2. The Defendants’ Reports

15 Rentas also argues that the District Court should not have excluded the
16 defendants’ incident reports and supporting documentation as hearsay at trial
17 on the remaining claims. On appeal, the defendants do not defend the
18 District Court’s assertion that the reports were inadmissible hearsay. Nor

1 could they, since Rentas did not offer the reports to prove the truth of the
2 matter asserted within them, but rather claimed that the reports were false.
3 See, e.g., United States v. Sliker, 751 F.2d 477, 489 (2d Cir. 1984); United States
4 v. Coven, 662 F.2d 162, 174 (2d Cir. 1981). Instead, the defendants argue that
5 the reports were needlessly cumulative of other direct testimony offered at
6 trial. See Fed. R. Evid. 403. For example, they point out, the District Court
7 excluded the use-of-force report prepared by Captain Darryll Lago because
8 Captain Lago himself testified at trial about the events he described in the
9 report.

10 This argument ignores the important purpose for which Rentas offered
11 the reports into evidence: to show that the defendants submitted false reports
12 in an effort to justify their use of force and deny Rentas a fair trial. Indeed,
13 the submission of false reports was the principal way in which Rentas could
14 show that the defendants interfered with his right to a fair trial given the jury
15 instruction that Rentas had the burden of proving that the defendants
16 “knowingly forwarded false information to prosecutors . . . that [was] likely
17 to influence a jury verdict to convict,” with the intent “to deprive a plaintiff of
18 his right to liberty and to a fair trial.” Joint App’x 3146-47. Nor were these

1 reports cumulative. They were central to Rentas’s fair trial, excessive force,
2 and failure to intercede claims, and the District Court’s decision to exclude
3 them was error.¹ We also conclude that there is a substantial likelihood that
4 their erroneous exclusion affected the outcome of the trial. Indeed, during the
5 jury’s deliberations, the jurors asked to see a few of the reports that had been
6 excluded, obviously to no avail. “[W]e are especially loath to regard any
7 error as harmless in a close case” such as this one, Hester v. BIC Corp., 225
8 F.3d 178, 185 (2d Cir. 2000) (quotation marks omitted), where the jury appears
9 to have found that there was some unjustified use of force and interference
10 with Rentas’s fair trial rights. In response, the defendants point out that
11 Rentas had the opportunity to cross-examine the witnesses based on
12 information contained in their reports. We are not persuaded that this
13 sufficiently addressed the prejudice caused by the exclusion of the reports.
14 Again, Rentas could have used the reports not only to impeach the
15 defendants,² but more importantly to prove that the defendants submitted

¹ We note, too, that on remand these reports may be relevant to Rentas’s malicious prosecution claim.

² For example, the record suggests there were some inconsistencies between two of the reports and the relevant testimony at trial. Officer Baker prepared

1 false reports to the District Attorney that facilitated and tainted the decision
2 to prosecute him in violation of his right to a fair trial. Because the error was
3 not harmless, we vacate the judgment as to the fair trial, excessive force, and
4 failure to intercede claims and remand for a new trial.³

5 3. Rentas's Remaining Arguments

6 Because Rentas is entitled to a new trial on his excessive force, fair trial,
7 and failure to intercede claims, we need not consider his remaining
8 arguments.⁴ Nevertheless, we provide some guidance to the District Court in
9 connection with any further trial proceedings in this case, as certain issues are

a report that was unsigned and omitted observations about Captain Ruffin. Officer Baker later rewrote the report and submitted an addendum about Captain Ruffin. The District Court admitted the latter report, but not the former. In addition, a report prepared by Captain Clayton but excluded from the trial record suggested that there was a directive to move inmates from one part of the dorm to another and that Rentas was told to move pursuant to that directive. At trial, however, Clayton testified that she was not aware of that directive.

³ Rentas urges this Court to assign his case to a different district court judge in the interest of "preserving the appearance of fairness." Plaintiff's Br. 74. We decline to do so.

⁴ For example, Rentas has argued that he was entitled to a jury instruction on failure to intercede relating to his fair trial claim. Because we remand for a new trial, we need not speculate on whether the evidence presented on remand will warrant such an instruction.

1 likely to recur at trial. In particular, we reject two arguments Rentas raised
2 about the District Court’s jury instructions: first, that the court erroneously
3 permitted the jury to award nominal damages for the excessive force and fair
4 trial claims, and second, that it failed to instruct the jury on assault and
5 battery.

6 A. Nominal Damages

7 “[W]hen a police officer creates false information likely to influence a
8 jury’s decision and forwards that information to prosecutors, he violates the
9 accused’s constitutional right to a fair trial.” Jocks v. Tavernier, 316 F.3d 128,
10 138 (2d Cir. 2003) (quoting Ricciuti, 124 F.3d at 130). Because Rentas was
11 detained for three years due to the defendants’ alleged misconduct, he argues
12 that the District Court was required to instruct the jury to award
13 compensatory, rather than nominal, damages if it found any defendant liable
14 for violating Rentas’s right to a fair trial. As support, Rentas cites Kerman v.
15 City of New York, 374 F.3d 93, 124 (2d Cir. 2004), in which we explained that
16 a “plaintiff is entitled to an award of compensatory damages as a matter of
17 law” when the jury has “found a constitutional violation and there is no
18 genuine dispute that the violation resulted in some injury to the plaintiff.” Id.

1 But in Kerman we also noted that “[a] finding that the plaintiff has been
2 deprived of a constitutional right does not automatically entitle him to a
3 substantial award of damages.” Id. at 123. “[W]hen a defendant has
4 deprived the plaintiff of liberty[,] . . . but the . . . adverse action would have
5 been taken even” in the absence of the wrongful conduct, “the plaintiff . . . is
6 entitled only to nominal damages.” Id.; see also Carey v. Piphus, 435 U.S.
7 247, 266-67 (1978) (holding that students that were suspended without a
8 proper hearing could be awarded nominal damages if the District Court
9 concluded their suspensions would have been justified even if they received a
10 hearing).

11 In Rentas’s case, the District Court instructed the jury that it could find
12 in his favor on the fair trial claim if it found that “a government official . . .
13 knowingly created false information” that was “likely to influence a jury
14 verdict to convict” and forwarded that information to prosecutors; that
15 Rentas’s “criminal prosecution cause[d] a reasonably foreseeable loss of
16 liberty”; and that the government official “specifically intend[ed] to deprive a
17 plaintiff of his right to liberty.” Joint App’x 3146-47 (emphasis added). Two
18 aspects of this jury charge lead us to conclude that the District Court did not

1 err in instructing the jury on nominal damages. First, the instructions
2 permitted the jury to find a defendant liable if the “criminal prosecution”
3 caused Rentas’s loss of liberty, even if the defendant did not cause the loss of
4 liberty directly. And second, the District Court was correct not to require
5 Rentas to prove that the criminal prosecution lacked probable cause, since
6 probable cause is not a defense to a fair trial claim. Ricciuti, 124 F.3d at 129-
7 30. Although, as we explained above, there was a genuine dispute at
8 summary judgment over whether the District Attorney’s office relied on
9 independent, untainted probable cause in prosecuting Rentas, the jury
10 reasonably could have resolved that dispute in the defendants’ favor after
11 trial.⁵ It follows, then, that even if Rentas suffered a loss of liberty due to the
12 “criminal prosecution,” the jury reasonably could have found that the loss of
13 liberty was not caused by the defendants’ alleged fabrication of evidence, but
14 rather by whatever independent, untainted evidence supported probable

⁵ As previously noted, on summary judgment as to Rentas’s malicious prosecution claim, there was, in our view, sufficient evidence to conclude that the Bronx County prosecutors lacked probable cause independent of and untainted by information supplied by the defendants. A jury finding at any retrial on remand that the prosecution was supported by independent, untainted probable cause would defeat Rentas’s malicious prosecution claim, but not his fair trial claim.

1 cause. In this case, the jury found that some defendants fabricated evidence
2 while others did not. The jury could have also found that the submission of
3 the non-fabricated evidence would have resulted in Rentas's loss of liberty
4 even in the absence of the fabricated evidence. Given these circumstances, the
5 District Court did not err in instructing the jury that it was entitled to award
6 nominal rather than compensatory damages on Rentas's fair trial claim.⁶

7 Rentas likewise argues the jury should have been compelled to award
8 him compensatory damages for his excessive force claim because there was
9 "undisputed evidence of compensable injuries in this case." Plaintiff's Br. 36-
10 37. According to Rentas, the jury had to accept either the defendants'
11 portrayal of the events or his own. Under the defendants' version, Rentas
12 attacked the correctional staff, including Captain Ruffin, and suffered injuries
13 to his head before being handcuffed. Under Rentas's version, the defendants
14 punched, kicked, and pepper sprayed Rentas after Captain Ruffin first placed
15 him in handcuffs. Rentas suggests that the jury, which found Captain Ruffin

⁶ The parties disagree as to the nature of the right in question, and specifically disagree as to how causation operates in this context. Whatever the correct resolution of that issue, the jury instructions given here on the fair trial claim allowed for a finding of nominal damages. Neither party objected to those instructions, and, consequently, we are not now required to decide whether they were proper.

1 liable, must have credited his version of events. If that were so, he reasons, it
2 should have awarded him compensatory damages since he testified that he
3 was beaten while handcuffed. See Haywood v. Koehler, 78 F.3d 101, 105 n.2
4 (2d Cir. 1996) (“If . . . a handcuffed prisoner[] was assaulted in a cell . . . such
5 an assault would necessarily warrant some compensatory damages, at least
6 for pain and suffering, even if no lacerations or other observable injuries
7 resulted.”). But Rentas’s portrayal of the evidence is too rigid. We are less
8 certain that the nature and cause of Rentas’s injuries were undisputed,
9 particularly where, as here, both justified and excessive force was arguably
10 used. See Gibeau v. Nellis, 18 F.3d 107, 110 (2d Cir. 1994). As the defendants
11 note, the jury was permitted to “piece together its account of what
12 happened.” Defendants’ Br. 41. The jurors could “accept bits of testimony
13 from several witnesses and . . . make reasonable inferences from whatever
14 testimony they credited.” Haywood, 78 F.3d at 105. Thus, the District Court
15 did not err in instructing the jury on nominal damages.

16 B. Assault and Battery

17 Rentas also argues that the District Court should have instructed the
18 jury separately on assault and battery under New York State law, which uses

1 the lower “objective reasonableness” standard commonly seen in Fourth
2 Amendment cases rather than the stricter Eighth Amendment standard that
3 governs his excessive force claim and requires a jury to find that force “was
4 applied . . . maliciously and sadistically to cause harm.” Hogan v. Fischer,
5 738 F.3d 509, 516 (2d Cir. 2013) (quotation marks omitted); see Graham v.
6 Connor, 490 U.S. 386, 397 (1989) (describing the objective reasonableness
7 standard under the Fourth Amendment).

8 Even assuming that Rentas is correct that the elements of an Eighth
9 Amendment excessive force claim differ from the elements of an assault and
10 battery claim in this context, Rentas was not entitled to a separate jury charge.
11 When pressed by the District Court on how the trial evidence would allow
12 the jury to find the defendants liable for assault and battery without also
13 finding them liable for the use of excessive force, Rentas did not point to
14 specific evidence, but argued only that “they are two different legal theories.”
15 Joint App’x 2989. Rentas also fails to acknowledge on appeal that the District
16 Court actually incorporated the lower “objective reasonableness” standard in
17 its jury charge on excessive force, instructing the jury that if it found “the
18 amount of force was greater than a reasonable corrections officer would have

1 employed under the circumstances, the plaintiff will have proved by a
2 preponderance of the evidence that he was deprived of . . . [his Eighth
3 Amendment] right.”⁷ Joint App’x 3145. Since these instructions were just as
4 favorable to Rentas as those he requested on assault and battery, we conclude
5 that the District Court did not err in declining to separately instruct the jury
6 on assault and battery.

7 4. The Cross-Appeal

8 Following the jury’s verdict in Rentas’s favor, all of the defendants
9 moved under Rule 50 to dismiss Rentas’s IIED claim as a matter of law. The
10 District Court denied the motion but for unexplained reasons entered
11 judgment against only Captain Ruffin. On appeal, Captain Ruffin challenges
12 the denial of the motion for judgment as a matter of law but does not
13 separately attack the jury’s verdict.⁸ His challenge rests on four main

⁷ The defendants do not challenge the District Court’s jury instructions on excessive force. We therefore need not consider whether the District Court erred in instructing the jury that it could find the defendants liable for the use of excessive force based only on a finding that the defendants used force that was objectively unreasonable.

⁸ The District Court entered judgment on the IIED claim against only Captain Ruffin, even though the jury found in Rentas’s favor on his IIED claim “against defendants.” Joint App’x 3211, 3312. At trial, Rentas maintained

1 grounds: (1) the IIED claim is barred because the New York statute of
2 limitations expired by the time Rentas filed his complaint; (2) Rentas failed to
3 file a sufficiently detailed notice of claim as required by Section 50-e of the
4 New York General Municipal Law; (3) the evidence was legally insufficient to
5 find Captain Ruffin liable for IIED; and (4) the IIED claim fell within the
6 ambit of the other claims Rentas asserted against the defendants. We briefly
7 address each of these grounds in turn.

that New York City should be vicariously liable for any damages the jury awarded him for his IIED claim and proposed that the District Court instruct the jury to determine only whether he had proven his IIED claim against any of the defendants. The District Court agreed and assured Rentas that it would entertain a post-verdict motion to enter judgment against the City if Rentas prevailed on his state-law claims. After the verdict, Rentas filed a motion for a new trial on damages, which included a request that the District Court enter judgment against the City for assault and battery (but not for IIED). The District Court denied the motion without addressing the City's liability and entered judgment against Ruffin only. In a footnote in his brief on appeal, Rentas purports to challenge the omission of the City as a defendant, Plaintiff's Br. 1 n.1, but does not otherwise make any arguments in support of that challenge. We exercise our discretion not to consider arguments raised only in a footnote. New York Psychiatric Ass'n, Inc. v. UnitedHealth Grp., 798 F.3d 125, 128 n.3 (2d Cir. 2015); Dow Jones & Co. v. Int'l Sec. Exch., Inc., 451 F.3d 295, 301 n.7 (2d Cir. 2006). Because Rentas is entitled to a new trial, we need not now determine whether the District Court erred in failing to enter judgment against the City, and we leave it to the District Court on remand to determine whether to reinstate the City as a named defendant on the caption.

1 A. Statute of Limitations

2 Rentas filed his complaint on August 18, 2010. In New York, an IIED
3 claim must be brought within one year of the injury. N.Y. C.P.L.R. 215(3).

4 But when, as in this case, a plaintiff sues the City (or an individual whom the
5 City must indemnify), a one-year-and-90-day statute of limitations applies.

6 See N.Y. Gen. Mun. Law § 50-i; Ruggiero v. Phillips, 739 N.Y.S.2d 797, 799-
7 800 (4th Dep’t 2002). Because the altercation between Rentas and the Rikers
8 staff occurred on July 12, 2007, the defendants argue Rentas should have filed
9 his complaint by October 12, 2008.

10 We disagree. The IIED claim involved continuous tortious conduct and
11 injury that spanned the criminal proceedings against Rentas and ended only
12 when the criminal charges were dismissed on August 2, 2010. Under New
13 York law, the statute of limitations on an IIED claim involving a continuous
14 injury does not begin to run until the conduct ceases. See, e.g., Shannon v.
15 MTA Metro-North R.R., 704 N.Y.S.2d 208, 209 (1st Dep’t 2000); Ain v. Glazer,
16 683 N.Y.S.2d 241, 242 (1st Dep’t 1999); Drury v. Tucker, 621 N.Y.S.2d 822, 823
17 (4th Dep’t 1994); cf. Dumas v. Levitsky, 738 N.Y.S.2d 402, 408 (3d Dep’t 2002).
18 Rentas’s claim therefore was not time-barred.

1 B. The Notice of Claim

2 Nor are we persuaded that Rentas failed to comply with the
3 requirements of New York’s Municipal Law by omitting his IIED claim from
4 his notice of claim. Under New York law, a plaintiff must file a notice of
5 claim before suing municipal defendants in a personal injury action. See
6 Hardy v. N.Y.C. Health & Hosps. Corp., 164 F.3d 789, 793 (2d Cir. 1999).
7 Although the notice must set forth “the nature of the claim,” N.Y. Gen. Mun.
8 Law § 50-e, it need not “state a precise cause of action in haec verba,”
9 DeLeonibus v. Scognamillo, 583 N.Y.S.2d 285, 286 (2d Dep’t 1992). In this
10 case, Rentas’s notice of claim alleged “[v]iolation of civil rights; battery; denial
11 of medical care; and negligent screening, hiring, training, supervising and
12 retaining of police officers.” Joint App’x 346. This description adequately
13 notified the municipal defendants that Rentas might bring an IIED claim
14 against them.

15 C. Sufficiency of the Evidence

16 We also reject Captain Ruffin’s argument that the trial evidence of IIED
17 was insufficient. In order to establish liability for IIED, a plaintiff must prove
18 that the defendants exhibited “(1) extreme and outrageous conduct” with the

1 “(2) intent to cause severe emotional distress,” that there was “(3) a causal
2 connection between the conduct and the injury,” and that “(4) severe
3 emotional distress” resulted. Bender v. City of New York, 78 F.3d 787, 790
4 (2d Cir. 1996). The defendants argue that Rentas’s IIED claim fails because
5 there was no medical evidence that he suffered emotional injuries. Even
6 assuming that medical evidence is required in order to prevail on an IIED
7 claim, there was sufficient evidence in the record to sustain the jury’s verdict.
8 Rentas’s hospital records reflected that he complained of anxiety, stress,
9 depression, and post-traumatic stress disorder and was receiving mental
10 health treatment. Rentas also testified at trial that he suffered “mental health
11 problems” and “emotional injuries” arising from the July 2007 altercation.
12 Joint App’x 2656, 2659. The medical records and testimony sufficed for the
13 jury to find in Rentas’s favor on the IIED claim.

14 D. Duplication of Other Claims

15 Finally, the defendants argue that Rentas’s IIED claim fell within the
16 ambit of his other tort claims. In Fischer v. Maloney, 43 N.Y.2d 553, 557-58
17 (1978), the New York Court of Appeals suggested that “it may be questioned
18 whether . . . [IIED] should be applicable where the conduct complained of

1 falls well within the ambit of other traditional tort liability.” But the Court of
2 Appeals did not hold that liability for IIED is never appropriate when the
3 underlying conduct may overlap with other torts. See Bender, 78 F.3d at 792
4 (2d Cir. 1996) (“[T]he initiation of a false charge, with sadistic intent and for
5 the purpose of subjecting Bender to the prosecution system, could be found to
6 involve additional elements not necessarily comprehended by the torts of
7 false arrest or malicious prosecution.”). In any event, here the District Court
8 was careful to instruct the jury specifically that any damages it awarded
9 Rentas for the IIED claim must be separate from the emotional damages it
10 awarded him for other claims. Any error that may have occurred from the
11 potential overlap of these claims was therefore harmless.

12 For these reasons, we affirm the District Court’s denial of the
13 defendants’ Rule 50 motion.

14 CONCLUSION

15 For the foregoing reasons, we **AFFIRM** the District Court’s judgment as
16 to the claim of intentional infliction of emotional distress, **VACATE** the
17 District Court’s judgment as to the malicious prosecution, excessive force, fair

- 1 trial, and failure to intercede claims, and **REMAND** for further proceedings
- 2 consistent with this opinion.