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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 228 SSM 48
Pedro Acosta,
Appellant,
v.
City of New York, et al.,
Respondents.

Submitted by Alexander J. Wulwick, for appellant.
Submitted by Drake A. Colley, for respondents.

MEMORANDUM:

The order of the Appellate Division should be reversed,
with costs, and the case remitted to that court for consideration
of issues raised but not determined on the appeal to that court.
A valid line of reasoning exists based on the record evidence to
support the jury verdict finding defendants liable for battery

and false arrest (see generally Cohen v Hallmark Cards, 45 NY2d 493, 49 [1978]). Thus, it was erroneous to set aside the verdict as a matter of law. On remittal, the Appellate Division must determine whether the jury's verdict is in accord with the weight of the evidence and, if so, whether the amount of damages awarded by the jury was excessive (see id. at 500 & n 4).

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and case remitted to the Appellate Division, Second Department, for consideration of issues raised but not determined on the appeal to that court, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur. Judge Smith dissents and votes to affirm for the reasons stated in the memorandum at the Appellate Division (72 AD3d 624).

Decided October 26, 2010