

20-14

*Ronald Ketcham v. City of Mount Vernon et al.*

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

August Term, 2020

(Argued: December 11, 2020)

Decided: March 29, 2021)

Docket No. 20-14

RONALD KETCHAM,

*Plaintiff-Appellant,*

V.

20-14-cv

CITY OF MOUNT VERNON, MICHAEL HUTCHINS, and ALLEN PATTERSON,

### *Defendants-Appellees.<sup>1</sup>*

Before: POOLER, WESLEY, and CARNEY, *Circuit Judges.*

## Appeal from the judgment of the United States District Court for the

<sup>29</sup> Southern District of New York (Briccetti, J.) granting summary judgment to

<sup>1</sup> The Clerk of Court is respectfully directed to amend the official caption as set forth above.

1 Defendants on Ronald Ketcham's excessive force claims brought pursuant to 42  
2 U.S.C. § 1983, as well as his state law assault and battery claims. Ketcham argues  
3 that the district court erred by resolving factual disputes in Defendants' favor,  
4 holding any use of force was *de minimis*, and misapplying the governing law on  
5 excessive force claims. Ketcham also seeks reassignment of the case to a new  
6 judge, arguing that the district court made inappropriate comments that created  
7 the appearance of bias. We find that the district court improperly resolved  
8 factual disputes in favor of the Defendants at the summary judgment stage. We  
9 do not find that reassignment is necessary. Accordingly, we VACATE the  
10 judgment of the district court and REMAND for further proceedings consistent  
11 with this opinion.

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13 DAVID B. SHANIES, New York, NY, for Plaintiff-  
14 Appellant Ronald Ketcham.  
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17 (Steven J. Bushnell, *on the brief*), White Plains, NY, for  
18 Defendants-Appellees City of Mount Vernon, Michael  
19 Hutchins, and Allen Patterson.  
20  
21

1 POOLER, *Circuit Judge*:

2 Plaintiff-Appellant Ronald Ketcham seeks to vacate the judgment of the  
3 district court granting summary judgment in favor of the City of Mount Vernon  
4 and two Mount Vernon police officers, Michael Hutchins and Allen Patterson  
5 (collectively, “Appellees”), on Ketcham’s excessive force claims brought  
6 pursuant to 42 U.S.C. § 1983, as well as his state law assault and battery claims.

7 At the district court, Appellees argued that there were no genuine disputes of  
8 material fact regarding the incident between Ketcham and the officers or,  
9 alternatively, that the officers were entitled to qualified immunity. The district  
10 court agreed with Appellees’ first argument, holding that any reasonable  
11 factfinder could only conclude that the officers’ use of force was reasonable due  
12 to the limited force used and the minimal injuries that Ketcham suffered. The  
13 district court granted Appellees summary judgment on this ground and did not  
14 reach the issue of qualified immunity.

15 Our review of the record reveals that the district court’s recitation of the  
16 facts elided crucial distinctions between the testimony of the three parties to this  
17 encounter. While the officers testified to using a reasonable amount of force to  
18 restrain an uncooperative individual matching the description of a suspect,

1 Ketcham testified to an aggressive assault, pleas for help, and a spiteful effort to  
2 punish a confused citizen by deliberately slamming his head into the patrol car's  
3 exterior as punishment for his confusion. It is for a jury and not a judge to decide  
4 which of these versions of events is accurate, and qualified immunity would not  
5 protect the deliberate infliction of injury suggested by Ketcham's testimony. As  
6 the district court did not properly view the evidence in the light most favorable  
7 to Ketcham at the summary judgment phase of the litigation, the judgment for  
8 Appellees must be reversed. Therefore, we vacate the judgment of the district  
9 court and remand for further proceedings consistent with this opinion.

10 **BACKGROUND**

11 On the afternoon of March 28, 2017, Ketcham, a retired federal probation  
12 officer, was walking toward Main Street near his home in New Rochelle, New  
13 York. Hutchins and Patterson, police officers assigned to the Mount Vernon  
14 Police Department's ("MVPD") warrant squad, were in the area searching for an  
15 individual with an outstanding warrant for a misdemeanor offense of forcible  
16 touching. The officers were in plain clothes in an unmarked vehicle with neither  
17 the emergency lights nor the sirens activated at the time. As the officers

1 approached Main Street, they saw a man (Ketcham) who fit the physical  
2 description of the individual with the active arrest warrant.

3 Before the district court, the parties disputed what happened after the  
4 officers spotted Ketcham. Ketcham stated that the vehicle came to a screeching  
5 halt next to him on the sidewalk at which point Patterson got out of the car and  
6 asked Ketcham to identify himself. Ketcham responded by asking the same of  
7 Patterson, to which Patterson rejoined that he was “taking [him] in.” App’x at  
8 93. Because Ketcham did not see Patterson wearing a badge or other identifying  
9 information, he thought he was being mugged or abducted, and so called out for  
10 bystanders to “get a uniformed police officer to the scene.” App’x at 94. In an  
11 instant, Patterson overpowered Ketcham, grabbing his wrist. Patterson then  
12 twisted Ketcham’s arms behind his back, threw him into a nearby chain link  
13 fence, and snapped handcuffs tightly around his wrists, causing him substantial  
14 pain. Apparently, Patterson did not “double lock[]” the handcuffs, a mechanism  
15 designed to avoid excessive tightening. App’x at 72, 115. Although Ketcham told  
16 Patterson that the handcuffs were hurting his wrists, Patterson ignored the  
17 complaints. At some point during this encounter, Ketcham saw a badge and

1 realized Patterson might be a police officer, but he was not certain. Ketcham did  
2 not recall any involvement from Hutchins during the physical altercation.

3 Ketcham further testified that he remained uncertain of what was  
4 happening as Patterson forced him into the back seat of the car, "slamm[ing]  
5 [his] head into the car's door frame" in the process. App'x at 223. After he was  
6 secured in the car, Ketcham observed Hutchins passing a file folder to Patterson,  
7 containing a photo of a white man with a bald head who looked like Ketcham. It  
8 was then that Ketcham realized that the two men were police officers, and he  
9 quickly told them that he was a former law enforcement officer as well. After  
10 hearing this, Patterson came around to the back seat, removed Ketcham's wallet,  
11 examined his driver's license, and confirmed that he was not the subject of the  
12 outstanding warrant. The officers then removed the handcuffs and returned the  
13 wallet. Ketcham asked for the officers' business cards, but Patterson laughed,  
14 and the officers drove away.

15 The officers' version of events differed greatly from Ketcham's. The  
16 officers testified that they approached Ketcham with shields visible around their  
17 necks and identified themselves as members of the MVPD. The officers told  
18 Ketcham that he fit the description of an individual with an active warrant, and

1 they asked him for identification. He did not provide one and instead verbally  
2 challenged the officers. Patterson testified that Ketcham then tried to push past  
3 Patterson, who responded by grabbing Ketcham's right hand, placing him in an  
4 "arm bar," and turning him around to handcuff him. App'x at 67-68. Hutchins  
5 did not testify that Ketcham made any physical contact with Patterson, but that  
6 they moved to arrest Ketcham when he refused to comply with their  
7 instructions. Both testified that Ketcham was screaming that he was being robbed  
8 and that they were fake cops trying to rob and kidnap him. Patterson further  
9 testified that, during the struggle, he had to push Ketcham up against the chain  
10 link fence to secure him because Ketcham continued to struggle and actively  
11 resist arrest. Patterson never felt in danger during the incident, and he subdued  
12 Ketcham in about a minute.

13 Both officers testified that once the handcuffs were secured on Ketcham's  
14 wrists, they attempted to move him into their vehicle. Ketcham resisted their  
15 efforts and Patterson later testified that although he attempted to guide  
16 Ketcham's head as they moved him into the vehicle, Ketcham's flailing resulted  
17 in him bumping his own head into the door frame. Hutchins testified that he  
18 walked Ketcham over to the car door and asked him to sit in the vehicle, but

1 Ketcham resisted by placing his foot in the door frame. In Hutchins's account, he  
2 then put his hand on Ketcham's shoulder and again asked him to sit down; this  
3 time Ketcham complied. He testified that neither he nor Patterson placed their  
4 hands on Ketcham's head, and that Ketcham did not hit his head. Further, after  
5 Ketcham was inside the vehicle, the officers told him the name of the individual  
6 subject to the warrant, and Ketcham provided his name and identifying  
7 documents. Patterson testified that upon the officers securing Ketcham in the  
8 vehicle, he immediately became cooperative and told them he was on their side.  
9 After providing his identifying documents and explaining that he used to be in  
10 law enforcement too, the officers apologized for the incident and quickly  
11 released him. They did not recall Ketcham asking for their cards, although  
12 Hutchins testified that he and Patterson informed Ketcham of their names and  
13 where they worked.

14 Ketcham testified that he suffered injuries to his head, knee, and wrists,  
15 and that although his head hurt, it was not bleeding or bruised and did not have  
16 broken skin. He did, however, have slight bruising on his knee from being  
17 pushed against the chain link fence, and he had broken and reddened skin,  
18 bruises, and discoloration on his wrists from the handcuffs. He did not seek

1 medical treatment for the physical injuries but claims to now suffer from  
2 increased anxiety as a result of the incident, for which his general practitioner  
3 has prescribed medication. Ketcham attached photos of his wrist and knee  
4 injuries to his amended complaint.

5 After the incident, Hutchins reported it to his superior officer. In his  
6 report, he stated that Ketcham adopted a “fighting stance,” which he described  
7 in his deposition as when Ketcham “took one step back” and kept his arms at his  
8 sides. App’x at 121. Ketcham called the MVPD the same day as the incident, and  
9 the department informed him that the car he described belonged to the warrant  
10 squad.

11 On September 19, 2017, Ketcham sued Mount Vernon and the two officers  
12 for excessive force and unlawful search and seizure pursuant to Section 1983. He  
13 also brought state law claims of battery, assault, and unlawful imprisonment.  
14 Ketcham later withdrew the unlawful search and seizure and unlawful  
15 imprisonment claims.

16 On February 19, 2019, Defendants requested leave to file a motion for  
17 summary judgment, and the district court held a conference on March 14, 2019 to  
18 discuss the proposed motion. At that conference, the district court made

1 comments that Ketcham considered biased. The district court noted the injuries  
2 in this case were more minor than in other excessive force cases and remarked  
3 that “this might be the rare case where your client’s feelings were hurt, and I  
4 don’t blame him, except as a former law enforcement officer, surely he must  
5 realize that sometimes . . . the police make a . . . good-faith mistake.” App’x at  
6 132. The district court also urged Ketcham to consider a settlement and  
7 emphasized Appellees’ “very generous” Rule 68 offer. App’x at 133. The district  
8 court described excessive force claims involving much more severe injuries  
9 where plaintiffs did not recover nearly as much.

10 After Ketcham’s counsel responded that Ketcham viewed the case very  
11 differently than the court did, a transcript of the proceedings reflects that the  
12 district court told counsel that

13 because I have hundreds of motions . . . you’ll go to the bottom of the  
14 pile. It just is. There’s nothing special about this case. If anything,  
15 what I should do is put it at the bottom of the second pile, it’s such a  
16 *de minimis* – it’s not literally *de minimis*, but what I mean is, in  
17 comparison to so many other cases I have where people have real  
18 concrete life-long injuries.

19  
20 App’x at 140.

21 The district court expressed to counsel that Ketcham had no serious  
22 physical injuries and stated that “[h]e should be thanking his lucky stars” that he

1 did not lose any time from work or suffer severe injuries and that he received an  
2 apology. App'x at 141.

3 On December 30, 2019, the district court granted summary judgment to  
4 Appellees on all claims. *Ketcham v. City of Mount Vernon*, No. 17-CV-7140 (VB),  
5 2019 WL 7293365, at \*1 (S.D.N.Y. Dec. 30, 2019). The district court ruled that  
6 regardless of any factual disputes, the force used was reasonable and Ketcham's  
7 injuries were *de minimis*. *Id.* at \*3-5. Ketcham appeals from this decision and seeks  
8 reassignment of the case based on the district court's judge's comments at the  
9 pre-motion conference.

10 **DISCUSSION**

11 We review a grant of summary judgment de novo, and in so doing, we  
12 construe the evidence in the light most favorable to the nonmoving party and  
13 draw all reasonable inferences in that party's favor. *See Okin v. Vill. of Cornwall-on-Hudson Police Dep't*, 577 F.3d 415, 427 (2d Cir. 2009). “[A]ll claims that law enforcement officers have used excessive force . . . in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its reasonableness standard.” *Graham v. Connor*, 490 U.S. 386, 395 (1989) (emphasis and internal quotation marks omitted). Examining the

1 reasonableness of the force used “requires careful attention to the facts and  
2 circumstances of each particular case, including [1] the severity of the crime at  
3 issue, [2] whether the suspect poses an immediate threat to the safety of the  
4 officers or others, and [3] whether [the suspect] is actively resisting arrest or  
5 attempting to evade arrest by flight.” *Id.* at 396. “*Graham . . . stands for the*  
6 *proposition that a government officer may not intrude on a person’s Fourth*  
7 *Amendment rights by employing a degree of force beyond that which is*  
8 *warranted by the objective circumstances of an arrest.*” *Cugini v. City of New York*,  
9 941 F.3d 604, 612 (2d Cir. 2019).

10 In deciding the motion for summary judgment, the district court was  
11 required to determine whether Ketcham raised a question of material fact,  
12 drawing all inferences in Ketcham’s favor. *See United States v. Rem*, 38 F.3d 634,  
13 643-44 (2d Cir. 1994). In granting Appellees summary judgment on Ketcham’s  
14 excessive force claim, the district court misapplied this standard. The district  
15 court described the incident as follows:

16 Plaintiff matched the physical description of an  
17 individual with an outstanding arrest warrant. He  
18 testified that when he was stopped by the police, he  
19 thought he was being abducted or robbed and thus, was  
20 not cooperative with the officers. . . . Officer Patterson  
21 testified any use of force by the officers was only enough

1 to match the force plaintiff was exerting to evade arrest.  
2 Therefore, the officers' use of the fence to prevent  
3 plaintiff from pushing past them was reasonable, as was  
4 placing plaintiff's right hand in an arm bar, handcuffing  
5 plaintiff, and inadvertently bumping plaintiff's head as  
6 he was placed in the vehicle.

7  
8 *Ketcham*, 2019 WL 7293365, at \*4. This recitation adopts Patterson's version of  
9 events even though Patterson's description deviates from both Ketcham's  
10 testimony and, in several material aspects, Hutchins's testimony.

11 Ketcham testified that he did not exert any force to resist arrest and his  
12 objections were purely verbal. Neither Ketcham nor Hutchins testified that  
13 Ketcham tried to push past the officers, and Ketcham testified that Patterson  
14 pushed or slammed his head into the vehicle, not that it was an inadvertent  
15 bump. Drawing all inferences in Ketcham's favor, as required when considering  
16 a summary judgment motion, a reasonable factfinder could determine that  
17 Patterson, who acknowledged he did not feel that he was in any danger,  
18 unnecessarily threw Ketcham against a wall, placed him in overtight restraints  
19 despite his protestations, and deliberately pushed Ketcham's head into the car  
20 door. We have held in similar cases that this type of judicial evidence weighing  
21 constitutes reversible error. *See, e.g., Mickle v. Morin*, 297 F.3d 114, 121 (2d Cir.  
22 2002) ("[I]n virtually every particular relating to the encounter between [plaintiff]

1 and the officers, the district court . . . adopted a version of the circumstances that  
2 was proffered by [the officers]. As [a] jury [is] not required to believe the  
3 disputed accounts given by either of the defendants, the court was required to  
4 disregard their testimony in ruling on their motion for judgment as a matter of  
5 law.”).

6 If Ketcham’s version of events is credited, a reasonable jury could find that  
7 the force was “beyond that which [was] warranted by the objective  
8 circumstances of [the] arrest.” *See Cugini*, 941 F.3d at 612. Accepting Ketcham’s  
9 version of events, Patterson used unnecessary force to restrain an unresisting  
10 individual and deliberately attempted to harm Plaintiff when he was already in  
11 handcuffs. While we have long acknowledged that “[n]ot every push or shove,  
12 even if it may later seem unnecessary in the peace of a judge’s chambers, violates  
13 [an individual’s] constitutional rights,” *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d  
14 Cir. 1973), *overruled in part by Graham*, 490 U.S at 392-94, we have also held that  
15 both unnecessary handcuff tightening and pushing an arrestee’s head into a  
16 police car door can constitute excessive force, *see Cugini*, 941 F.3d at 616 (holding  
17 that our precedents “clearly establish in this Circuit that an officer’s use of  
18 excessive force during handcuffing could give rise to a Fourth Amendment claim

1 for excessive force" (footnote omitted)); *see also Maxwell v. City of New York*, 380  
2 F.3d 106, 109 (2d Cir. 2004) (holding that a shove of a restrained defendant into a  
3 police car causing the defendant's head to strike a hard surface inside the car  
4 could constitute excessive force).

5 Appellees argue that the district court's description of the facts was not  
6 improperly biased towards the officers and that there is an inconsistency  
7 between Ketcham's deposition testimony, where he stated that Patterson hit his  
8 head on the car or pushed his head into the car, and his declaration, which used  
9 the word "slammed." It is not clear what is inconsistent about these descriptions,  
10 and any perceived inconsistency in wording is properly addressed by cross-  
11 examination, not a summary judgment motion, where all facts must be construed  
12 in the most favorable light for Ketcham.

13 Appellees also point to Ketcham's statements that he continued to scream  
14 for help throughout the encounter as an "important[]" factor in the excessive  
15 force analysis. Appellees' Br. at 18. They do not, however, offer case law that  
16 suggests that force of any quantum is reasonable in response to purely verbal  
17 protestations. Indeed, this would violate *Graham*, which allows only the force  
18 necessary to make an arrest. Therefore, far from supporting Appellees' position,

1 Ketcham's testimony in this regard actually creates a triable issue of fact on the  
2 question of excessive force. *See Bellamy v. City of New York*, 914 F.3d 727, 746 (2d  
3 Cir. 2019) ("[A] § 1983 plaintiff's testimony alone may be independently  
4 sufficient to raise a genuine issue of material fact.").

5 The district court also held that Ketcham's injuries were de minimis as a  
6 matter of law, barring recovery of any damages. *Ketcham*, 2019 WL 7293365, at \*5.  
7 The fact that Ketcham's injuries were not severe is insufficient to merit summary  
8 judgment. With respect to the handcuffing, "[t]he question is . . . whether an  
9 officer reasonably should have known during handcuffing that his use of force  
10 was excessive." *Cugini*, 941 F.3d at 613. Here, Ketcham testified that he  
11 complained to Patterson that the handcuffs were causing him pain, thus  
12 suggesting that Patterson was on notice that the force was excessive. In addition,  
13 all of the *Graham* factors point in favor of Ketcham at the summary judgment  
14 stage: the offense was a misdemeanor; Patterson did not feel that Ketcham posed  
15 a threat; and Ketcham did not flee or, crediting his testimony, attempt to  
16 physically resist. *See id.* at 613-14.

17 The court below relied on a line of district court cases holding that while a  
18 plaintiff's wrist injuries "need not be severe or permanent," they "must be more

1 than merely de minimis" to survive a motion for summary judgment. *See, e.g.*,

2 *Usavage v. Port Auth. of N.Y. & N.J.*, 932 F. Supp. 2d 575, 592 (S.D.N.Y. 2013)

3 (citations and internal quotation marks omitted) (collecting cases). In turn, the

4 district court here emphasized Ketcham's failure to seek medical treatment and

5 the lack of permanent injury as bases to dismiss the tight-handcuffing

6 allegations. However, we have never held that a court may grant summary

7 judgment to officers on an excessive force claim merely because the injuries were

8 minor even where the force was unreasonable. Any such holding would violate

9 the rule announced in *Graham* and would grant a windfall to officers who

10 commit misconduct but could escape liability based upon the hardness of their

11 victims. While the absence of serious injury is certainly a matter that the jury can

12 consider in assessing both the reasonableness of the force and potential damages

13 from any misconduct, a district court should not grant summary judgment on

14 this basis alone.

15 Additionally, there is presumably no proper law enforcement justification

16 for deliberately pushing a restrained individual's head into a car's hard, metal

17 doorframe. Thus, if a jury credits Ketcham's testimony that Patterson

18 deliberately slammed his head into the car's doorframe despite him being

1 restrained and not resisting, that force would be excessive. Regardless of the  
2 extent of Ketcham's injuries, the infliction of harm against a restrained and  
3 unresisting suspect is excessive force, and such conduct would violate the Fourth  
4 Amendment.

5 As an alternative basis for upholding the district court's decision,  
6 Appellees argue that the officers were entitled to qualified immunity as a matter  
7 of law. To demonstrate entitlement to qualified immunity, the officers must  
8 show that their actions did not violate clearly established law, or that it was  
9 objectively reasonable for them to believe that their actions did not violate such  
10 law. *See Salim v. Proulx*, 93 F.3d 86, 91-92 (2d Cir. 1996).

11 The district court did not address this argument. Because we conclude  
12 that reasonable officers would not disagree as to the illegality of the alleged  
13 handcuffing conduct, qualified immunity is rejected in that respect. *See Lennon v.*  
14 *Miller*, 66 F.3d 416, 420 (2d Cir. 1995). The established law of this Circuit makes  
15 clear that the excessive tightening of handcuffs after an explicit verbal complaint  
16 of pain is made violates the Fourth Amendment. *Cugini*, 941 F.3d at 616.  
17 Accordingly, it would be unreasonable for officers to believe that ignoring  
18 Ketcham's cries to loosen the over-tight, non-double-locked restraints did not

1 violate clearly established law. If credited by a jury, Ketcham's testimony  
2 indicates Patterson did just that. We therefore reject his qualified immunity  
3 defense as to the handcuffing allegations.

4 We reach the same conclusion with regard to the alleged head-slamming  
5 conduct. By March 2017, it was "clearly established by our Circuit caselaw that it  
6 is impermissible to use significant force against a restrained arrestee who is not  
7 actively resisting." *Lennox v. Miller*, 968 F.3d 150, 157 (2d Cir. 2020). "[T]his is  
8 true despite differences in the precise method by which that force was  
9 conveyed." *Id.*<sup>2</sup> Even more to the point, we have previously reversed a grant of  
10 summary judgment where the plaintiff adduced evidence that a police officer  
11 "shoved her head first into his police car, causing her head to strike the metal  
12 partition between the front and back seats." *Maxwell*, 380 F.3d at 108. Therefore,  
13 accepting as true Ketcham's testimony that Patterson "slammed [his] head into  
14 the car's door frame" despite being restrained and physically docile, App'x 223 ,

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<sup>2</sup> In *Tracy v. Freshwater*, 623 F.3d 90, 99 (2d Cir. 2010), this Court held that using pepper spray gratuitously against a restrained and unresisting arrestee is excessive force. In 2018, we held that *Tracy* strongly suggested as early as 2013 that "officers may not use a taser against a compliant or non-threatening suspect." *Muschette on Behalf of A.M. v. Gionfriddo*, 910 F.3d 65, 69 (2d Cir. 2018) (citing *Tracy*, 623 F.3d at 96-98). And in *Lennox*, 968 F.3d at 156 (2d Cir. 2020), we held that it was clearly established before July 2016 that slamming an arrestee's head into the ground after she was already handcuffed and lying face down is excessive force.

1 we must reject Patterson's qualified immunity defense in this respect as well.

2 Finally, Ketcham asks us to reassign this case based on the district court's  
3 judge's comments during a pre-motion hearing. Reassignment of a case "is an  
4 extreme remedy, rarely imposed . . . but occasionally warranted, even in the  
5 absence of bias, to avoid an appearance of partiality." *United States v. City of New  
6 York*, 717 F.3d 72, 99 (2d Cir. 2013) (internal citations and quotation marks  
7 omitted). We will only reassign a case on remand in an "extraordinary case."  
8 *United States v. Jacobs*, 955 F.2d 7, 10 (2d Cir. 1992) (internal quotation marks  
9 omitted). We have provided a list of factors for assessing when reassignment is  
10 warranted:

11 (1) whether the original judge would reasonably be  
12 expected upon remand to have substantial difficulty in  
13 putting out of his or her mind previously-expressed  
14 views or findings determined to be erroneous or based  
15 on evidence that must be rejected, (2) whether  
16 reassignment is advisable to preserve the appearance of  
17 justice, and (3) whether reassignment would entail waste  
18 and duplication out of proportion to any gain in  
19 preserving the appearance of fairness.

20  
21 *Gonzalez v. Hasty*, 802 F.3d 212, 225 (2d Cir. 2015) (citation omitted).

22 The statements of the district court here are insufficient to require  
23 reassignment. The district court expressed skepticism about Ketcham's possible

1 recovery, frustration regarding his decision not to accept what the court saw as a  
2 fair settlement proposal, sympathy for law enforcement professionals' work, and  
3 a warning that the case would be at the back of his agenda. While some of these  
4 comments may have been ill-considered, the district court did not express a  
5 position as to the ultimate outcome of the case: "Is [the claim] enough to get past  
6 summary judgment? Maybe. I'm not ruling today. I don't want you to think  
7 otherwise. I'm not." App'x at 134. The district court's comments referenced the  
8 district's shortage of judges and high case load, and they were properly  
9 understood as a warning about the risks of litigation and advice to settle. *See*  
10 *Liteky v. United States*, 510 U.S. 540, 555-56 (1994) ("Not establishing bias or  
11 partiality, however, are expressions of impatience, dissatisfaction, annoyance,  
12 and even anger, that are within the bounds of what imperfect men and women,  
13 even after having been confirmed as federal judges, sometimes display. A  
14 judge's ordinary efforts at courtroom administration—even a stern and short-  
15 tempered judge's ordinary efforts at courtroom administration—remain  
16 immune." (emphasis in original)).

17 The district court may have been overly eager in its efforts to push  
18 Ketcham towards settlement, but such comments are not sufficient to show that

1 the court could not be impartial. The district court delivered a decision in a  
2 timely fashion, and while we disagree with the outcome, its reasoning was not  
3 absurd or illegitimate.

4 Ketcham offers no basis to conclude that the district court would be unable  
5 to set aside its previously expressed views and fairly shepherd the case to  
6 conclusion. Ketcham does not address this issue in his briefing, but he points to  
7 alleged errors in the district court's opinion. The district court's errors of law are  
8 not a basis to question its ability to heed the decisions of this Circuit. Absent any  
9 reason to find the district court would not accept our decision on remand, there  
10 are no grounds to reassign the case. *See Gonzalez*, 802 F.3d at 225.

11 **CONCLUSION**

12 As set out above, Ketcham's testimony raised questions of material fact  
13 and Appellees are not entitled to qualified immunity as a matter of law. Ketcham  
14 is entitled to an opportunity to prove his case before a jury. Accordingly, the  
15 judgment of the district court is vacated, and this case is remanded for further  
16 proceedings consistent with this opinion.

17