



IN THE COURT OF APPEALS OF IOWA

LARRY WILSON.)

Plaintiff-Appellee,)

Filed April 26, 1979

vs.)

CITY OF CEDAR RAPIDS, IOWA, A)
MUNICIPALITY, CEDAR RAPIDS PUBLIC)
SAFETY COMMISSION, CEDAR RAPIDS)
POLICE DEPARTMENT, JAMES YOUNG)
(BADGE NO. 94), MICHAEL KLAPPHOLZ)
(BADGE NO. 152),)

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2-61810

Defendants-Appellants.)

Appeal from Linn District Court - Robert Osmundson, Judge.

Defendants appeal from judgment for plaintiff and damage awards in an action alleging false arrest, assault, and false imprisonment. Affirmed.

Raymond R. Stefani, of Silliman, Gray & Stapleton, of Cedar Rapids, for appellants.

Emmit J. George, of Iowa City, for appellee.

Heard by Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Defendants appeal from judgment for plaintiff Larry Wilson and damage awards in an action alleging false arrest, assault and imprisonment.¹

On September 30, 1975, a rape victim identified a police mug shot of one Larry Eugene Wilson as one of her assailants. Larry Eugene Wilson is described as a 22-year-old black male, 5'9" tall and weighing 160 pounds, with his hair worn in tight braids. An "attempt to locate" form was issued to Cedar Rapids police officers giving Larry Eugene Wilson's description and indicating that he had been identified by a rape victim; no warrant for his arrest was issued.

On Sunday, October 5, 1975, an off-duty police officer was told that a "Larry Wilson" was living in an apartment building at 640 16th Avenue S.W., and was given a description of two cars owned by this man. This information was added to the attempt to locate form concerning Larry Eugene Wilson. The registration and license of the vehicles were not checked; hence, police were unaware that this information described the plaintiff, Larry Thomas Wilson. Plaintiff was a 22-year-old black male, 6'1" tall and weighing 165 to 170 pounds, who wore his hair in tight braids.

The police radio dispatcher instructed uniformed officers Young and Klappholz to check out the address given on the attempt to locate form. The dispatcher had no knowledge of a warrant being issued for the arrest of Larry Eugene Wilson, and did not tell the officers that a warrant existed, or to make an arrest. When the cars belonging to plaintiff were observed in the parking lot of the apartment building, a backup unit was sent and the officers went inside.

When plaintiff answered the door at the apartment where he was living and acknowledged that he was Larry Wilson, he was immediately arrested. Plaintiff, clad only in a pair of denims, was told there was a warrant for his arrest. He was handcuffed, allowed to slip on a pair of shoes and wrap a shirt around his shoulders, and was transported to the Cedar Rapids police station where he was booked. The detective investigating the rape was telephoned at home and told of the arrest. At the station,

¹ Counts alleging false arrest and assault with regard to defendant Klappholz were dismissed before the case was submitted to the jury.

plaintiff requested a copy of the warrant for his arrest and was informed at that time that there was none. An information was prepared charging "Larry Thomas Wilson" with the crime of rape; at least one officer was aware of the discrepancy in names between plaintiff and the individual named on the attempt to locate form.² Plaintiff was held overnight in a jail cell 16' x 8' along with 22 other men. There were eight beds in the cell, one sink and one unpartitioned toilet. Plaintiff described the cell as small, filthy, crowded and cold, and passed the night sitting on the floor.

When the report on plaintiff's arrest was reviewed by a detective early Monday morning, October 6, 1975, the mistake in identity was immediately discovered. The rape victim was brought to the station and allowed to view plaintiff; she stated that he was not one of her attackers. Plaintiff was then freed; this action followed. The jury returned verdicts of \$500 actual damages for false arrest, \$5000 exemplary damages for false arrest, \$1000 actual damages for false imprisonment, \$15,000 exemplary damages for false imprisonment, and a verdict for defendants on the assault count. From judgment and damage awards on the false arrest and false imprisonment counts, defendants appeal. We affirm the trial court.

L. Probable cause for arrest. Defendants first contend that the trial court erred in overruling their motions for directed verdict, judgment notwithstanding the verdict, and for new trial on grounds that as a matter of law probable cause existed for the arrest of plaintiff. Defendants urge that the existence of reasonable grounds and probable cause make plaintiff's warrantless arrest lawful and frees them from liability. See section 755.4, The Code 1975; State v. Houston, 261 Iowa 1369, 158 N.W.2d 158 (1968); State v. Raymond, 258 Iowa 1339, 142 N.W.2d 444 (1966).

In considering the propriety of a motion for directed verdict and new trial, the court views the evidence in the light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). Plaintiff urges that the arresting officers had no probable cause to arrest him when the attempt to locate form named and described one Larry Eugene Wilson, who had some similar physical characteristics.

² There were files on at least three individuals named Larry Wilson in the records of the Cedar Rapids police department at the time of plaintiff's arrest.

There was no warrant for the arrest of either Larry Eugene Wilson or plaintiff, and the officers were not instructed to arrest anyone. Testimony indicated that location of a person named in an attempt to locate form would result in questioning by police and not necessarily arrest. Plaintiff testified that he had heard from a relative earlier in the week that the police were looking for a Larry Wilson; he had called the police department and been told he was not being investigated. Plaintiff was not questioned about his identity or his alleged crime at the time of his arrest, after his admission that his name was Larry Wilson. While in custody at the police station, plaintiff asked to see a copy of his arrest warrant and was told there was no warrant on file. At the time of his arrest he had been told there was a warrant. The facts relied on by defendants to establish probable cause may be subject to different inferences; consequently, they engender a jury question. Iowa R. App. P. 14(f)(17); Sergeant v. Watson Bros. Transportation Co., 244 Iowa 185, 194, 52 N.W.2d 86, 91 (1952). There was no error when the trial court submitted the case to the jury, overruling defendant's motion for directed verdict, motion for judgment notwithstanding the verdict, and motion for new trial.

The factual situation involved here is an example of the vagaries of the police profession. The plaintiff generally matched the description of the actual suspect, being approximately the same age, height, weight, color, and wearing a similar hair style. He did not make the expected protestation of innocence. The inexact science of police work particularly as it relates to people, may perhaps individually account for the confusion of the proper use of an attempt to locate form, the lack of an arrest warrant, the failure of the detective to come to the station and tie up the "loose ends," and the lack of action concerning the early discovery of conflicting middle names between plaintiff and the actual suspect. There were perhaps sufficient reasons behind all of the single procedures and events that took place. Still, they cause a cumulative effect that results in a cause of action that brings the jury system into play.

II. Exemplary damages. Defendants next contend that there was insufficient evidence to support the jury's award of exemplary damages on the false arrest and false imprisonment allegations, that the jury's awards were excessive in any event, and that the instant case lacks the proper circumstances to support an award of exemplary

damages against the defendant municipality and its agencies. In Young v. City of Des Moines, 262 N.W.2d 612 (Iowa 1978), the supreme court held punitive damages to be recoverable from municipalities to the same extent as against private corporations under the same legal principles. Reconsideration of issues resolved in a recent *en banc* supreme court decision is not an appropriate function of this court; we find the trial court did not err in instructing the jury on exemplary damages. The amount of exemplary damages to be awarded must be left to the sound judgment of the jury, subject to judicial review. Young v. City of Des Moines, 262 N.W.2d at 622. The standard of our review is whether the verdict is a result of passion and prejudice and is so excessive as to shock the conscience. Sergeant v. Watson Bros. Transportation Co., 244 Iowa at 199-200, 52 N.W.2d at 94. While the exemplary damages may be greater than this court would have awarded, they are supported by the evidence, and will not be set aside here. See generally, Olsen v. Drahos, 229 N.W.2d 741, 742 (Iowa 1975).

III. Jury Instructions. Defendants next contend that the trial court erred in submitting instructions nos. 13 and 14 to the jury over defendants' objections, which allowed the jury to award exemplary damages and damages for "mental anguish and suffering" without supporting evidence. Instruction No. 14 instructed the jury in part that the law "permits but does not require the jury to allow exemplary damages in certain cases if it is found by the jury that the acts of the defendants causing the injury complained of was [sic] wanton, heedless, and with utter disregard of the result." There was no error in instructing the jury as to exemplary damages. See Young v. City of Des Moines; Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393 (Iowa 1977); Sebastian v. Wood, 246 Iowa 94, 66 N.W.2d 841 (1954).

The trial court also instructed the jury as to compensatory damages, stating: "If, after a careful and impartial consideration of all the evidence in the case, you find the Plaintiff entitled to recovery from the defendants, it will then be your duty to determine the amount of his recovery for damages, if any, sustained by him for his mental anguish and suffering on each of his claims." When considering whether there was evidentiary support for an instruction, we must give the evidence the most favorable construction it will reasonably bear. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d at 399; Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790 (Iowa 1969).

Plaintiff and his witnesses testified to his reaction to the false arrest and false imprisonment. There was evidence concerning the possibility that plaintiff suffered some mental pain and anguish, even though plaintiff testified that he could not directly tie his hospitalization in 1976 for "nerves" to the October 1975 incident. Recovery may be had for mental suffering even when there is no physical injury, when the act complained of is willful or malicious. See Curnutt v. Wolf, 244 Iowa 683, 688, 57 N.W.2d 915, 918 (1953). There was sufficient evidence to support submission of the instruction to the jury.

IV. Relevancy of evidence. At trial, defendants objected to the admission by plaintiff of reports of the grand jury and county attorney concerning the condition of the Linn County jail, after inspections made in late August of 1975. Defendants objected that the reports, which suggested immediate actions be taken to improve the facilities, had no relevancy to the condition of the jail on October 5, 1975, when plaintiff was incarcerated. The test of relevancy is whether the evidence offered makes the desired inference more probable than it would be without the evidence. Carson v. Mulnix, 263 N.W.2d 701, 706 (Iowa 1978); State v. Engeman, 217 N.W.2d 638, 639 (Iowa 1974). The reports concerning the conditions at the jail prior to plaintiff's arrest were clearly relevant to plaintiff's testimony of conditions during his confinement. The determination of relevancy rests largely in the discretion of the trial court, Cowman v. LaVine, 234 N.W.2d 114, 121 (Iowa 1975); Hagenson v. United Telephone Co. of Iowa, 209 N.W.2d 76, 80 (Iowa 1973), and we find no abuse of discretion here.

AFFIRMED.