

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES C. LEWIS,

Plaintiff-Appellee,

V

YPSILANTI POLICE DEPARTMENT,

Defendant,

and

BRETT L. ARMSTRONG,

Defendant-Appellant.

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UNPUBLISHED

November 16, 2001

No. 223352

Washtenaw Circuit Court

97-004183-NO

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action in which plaintiff alleged claims of false arrest, malicious prosecution, and assault and battery, defendant-appellant Brett L. Armstrong (defendant) appeals as of right the trial court's denial of his motion for a directed verdict. After a trial by jury, the jury rendered a verdict in favor of defendant on the malicious prosecution count. However, the jury found in favor of plaintiff on the false arrest and assault and battery counts and awarded plaintiff \$20,000. We affirm.

In his sole argument on appeal, defendant asserts that he was entitled to a directed verdict because plaintiff did not present any evidence of damages at trial. The trial court agreed that plaintiff had not presented any evidence of physical injury, but denied the motion and instructed the jury that it should consider whether plaintiff demonstrated that he suffered mental distress because of the incident.

We review a trial court's grant or denial of a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). This Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed. A directed verdict is appropriate only when no

factual question exists regarding which reasonable minds may differ. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

It is undisputed that plaintiff is entitled to recover damages for mental pain, anxiety, and anguish. See *Veselenak v Smith*, 414 Mich 567, 574; 327 NW2d 261 (1982). Defendant contends, however, that the jury cannot speculate or presume that plaintiff suffered mental distress. Specifically, defendant argues that plaintiff must have testified at trial to the “nature, extent, and duration of his distress.”

Proof of damages is not an essential element of false imprisonment, *Adams v National Bank of Detroit*, 444 Mich 329, 341; 508 NW2d 464 (1993), or assault and battery, *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998). Further, in the context of the review of an award of exemplary damages, this Court has ruled, “[i]t is not essential to present direct evidence of an injury to the plaintiff’s feelings. Rather, the question is whether the injury to feelings and mental suffering are natural and proximate in view of the nature of defendant’s conduct.” *McPeak v McPeak*, 233 Mich App 483, 490; 593 NW2d 180 (1999), citing *Green v Evans*, 156 Mich App 145; 401 NW2d 250 (1985). We find that the same rule is applicable in the present case.

Here, the parties agree that plaintiff did not specifically testify that he suffered mental distress after the incident. Indeed, plaintiff’s testimony mainly concerned the circumstances surrounding the incident. However, testimony was presented that would support a finding that plaintiff suffered mental distress. Priscilla Reed testified that she observed plaintiff during the incident and that he “sounded angry” and appeared very upset. Sergeant Ehr, the police officer who transported plaintiff to the police station, also described plaintiff as “agitated” and “upset.” Moreover, George Basar, acting police chief for Ypsilanti, testified that he had known plaintiff for over twenty years. Basar stated that he saw plaintiff immediately after the arrest and that plaintiff was “very upset.” In light of the testimony, and affording plaintiff all reasonable inferences, a reasonable jury could conclude that plaintiff suffered fright during the physical encounter with the police and humiliation and embarrassment because of the arrest and subsequent trial in which plaintiff was acquitted. Thus, the trial court did not err when it denied defendant’s motion for a directed verdict.

We decline plaintiff’s request for attorney fees and costs for responding to this appeal. We find no evidence that this appeal was taken for purposes of hindrance or was totally lacking in merit. Further, we do not find that defendant made any material misrepresentations in his statements of facts or legal analysis. MCR 7.216(C)(1).

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey