



Neutral Citation Number: [2024] EWHC 1297 (KB)

Case No: KB 2023 004128

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29 May 2024

Before :

**MASTER SULLIVAN**

Between :

**THOMAS WARD**

**Claimant**

- and -

**THE CHIEF CONSTABLE OF GREATER  
MANCHESTER POLICE**

**Defendant**

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Frederick Powell (instructed by Saunders & Partners LLP) for the Claimant  
George Thomas (instructed by Greater Manchester Police) for the Defendant

Hearing dates: 22 and 28 February 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 29 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER SULLIVAN

**Master Sullivan:**

1. On the evening of 23 October 2015, Mr Ward was driving his car in Manchester when he noticed a police car was trying to pull him over. At the time, Mr Ward was wanted as a suspect in 9 burglaries. Mr Ward did not stop but drove away from the police leading to a chase in which he drove dangerously. He drove to a travellers' site where his sister was living. The entrance to the site was blocked by a parked car. He stopped his car, got out, and ran onto the site.
2. The police car was driven by PC Pye. PC Jackson, a police dog handler, and Manchester Police dog Jerry ("PD Jerry") were also in the car. They stopped at the entrance to the travellers' site a few seconds after Mr Ward. The exact sequence is in dispute, but the police officers and PD Jerry got out of the car and chased Mr Ward and detained him. The police car had a dash cam but it does not record the relevant events.
3. Mr Ward says that as he ran he heard a shout along the lines of "Stop, police" but there was no reference to a dog. He did not stop and close to the entrance to the site, he was tackled to the floor by a police officer who he now understands to be PC Jackson. He was put in handcuffs whilst face down on the floor and then felt pain in his right leg. He looked and saw that PD Jerry had bitten into his right lower leg and was continuing to bite whilst shaking his head from side to side.
4. PC Jackson says that Mr Ward was running away and he shouted a warning to the effect of "police with a dog, stop or I will send the dog". Mr Ward did not stop so he sent PD Jerry with the command "hold him". PC Jackson and PD Jerry pursued Mr Ward round a corner. PD Jerry reached Mr Ward first, and when PC Jackson saw them, Mr Ward was trying to pull himself under a parked car and PD Jerry had detained him by the right leg. PC Jackson has described a tug of war between PD Jerry and Mr Ward as Mr Ward was trying to get further under the car. It is said that Mr Ward was then handcuffed and PC Jackson then gave the command "Jerry out" at which point PD Jerry stopped biting Mr Ward. From the timer on the dash cam, the incident from when Mr Ward ran from his car to when he was brought back to the police car lasted about 63 seconds.
5. It is agreed that Mr Ward suffered a significant wound to his right lower leg. The police took Mr Ward directly to hospital as it was quicker than waiting for an ambulance. The wound was bleeding profusely and so the police put a tourniquet on. It appears that the police on the scene thought the wound was worse than a normal dog bite.
6. The hospital notes record a large laceration extending 70% circumferentially around the calf and measuring approximately 30cm x 15cm at the widest area. Significant skin loss was noted. Damage to muscle and tendons was noted. Mr Ward's case is that he has suffered long term nerve damage and chronic pain as a result of the wound.
7. Mr Ward pleaded guilty to dangerous driving and on 10 February 2016 was sentenced to 8 months imprisonment to run consecutively with the 9 offences of burglary for which he was also convicted.

8. Mr Ward wishes to bring a claim against the Chief Constable for Greater Manchester Police for the injuries he suffered as a result of the bite from PD Jerry. Section 329 of the Criminal Justice Act 2003 provides that where a claimant alleges a defendant has done an act amounting to trespass to the person and the claimant has been convicted of an imprisonable offence committed on the same occasion as that on which the act amounting to trespass occurred, civil proceedings can only be brought with permission of the court. This is my decision in relation to that application.

The law

9. Section 329(1) Criminal Justice Act 2003 provides (as relevant):
- (1) This section applies where—
    - (a) a person (“the claimant”) claims that another person (“the defendant”) did an act amounting to trespass to the claimant’s person, and
    - (b) the claimant has been convicted in the United Kingdom of an imprisonable offence committed on the same occasion as that on which the act is alleged to have been done.
  - (2) Civil proceedings relating to the claim may be brought only with the permission of the court.
  - (3) The court may give permission for the proceedings to be brought only if there is evidence that either—
    - (a) the condition in subsection (5) is not met, or
    - (b) in all the circumstances, the defendant’s act was grossly disproportionate.
  - (4) ...
  - (5) The condition referred to in subsection (3)(a) and (4)(a) is that the defendant did the act only because—
    - (a) he believed that the claimant—
      - (i) was about to commit an offence,
      - (ii) was in the course of committing an offence, or
      - (iii) had committed an offence immediately beforehand; and
    - (b) he believed that the act was necessary to—
      - (i) defend himself or another person,
      - (ii) protect or recover property,
      - (iii) prevent the commission or continuation of an offence, or
      - (iv) apprehend, or secure the conviction, of the claimant after he had committed an offence;

or was necessary to assist in achieving any of those things.

10. The effect of this provision is that where a person is injured by a trespass to the person whilst committing a crime for which they are later imprisoned, they can only bring a claim for those injuries where there is evidence that either (i) when the defendant did the act which amounts to trespass, they did not do so only because he believed that the claimant was committing, had committed or was about to commit an offence, and that they did not believe the act was necessary for the purpose of self-defence, recovering property, prevention of commission of offence or to apprehend or secure a conviction of the claimant, or (ii) alternatively in all the circumstances, the defendant's act was grossly disproportionate.
11. In *Adorian v Commissioner of Police* [2009] EWCA Civ 18 Lord Justice Sedley noted at [6]:
  - “6. One cannot fail to notice that this section has nothing on the face of it to do with policing. In what one can call the Tony Martin situation – a sudden encounter with a crime - it gives the individual a defence of honest, even if unreasonable, belief in the need for his or her act; and it forfeits the defence only if the act was grossly disproportionate. There is nothing on the face of the section or in its shoulder-note which manifests an intention to afford the police a novel protection from claims by offenders for objectively unreasonable or unnecessarily violent arrests.”
  7. The section nevertheless inexorably covers police officers as well as civilians. Indeed, so far as counsel have been able to tell us, since it was brought into force in January 2004 it is only police defendants who have invoked it. The consequences should not go unnoticed. In place of the principle painstakingly established in the course of two centuries and more, and fundamental to the civil rights enjoyed by the people of this country - that an arrest must be objectively justified and that no more force may be used in effecting it than is reasonably necessary - the section gives immunity from civil suits, not confined to those involving personal injury, to constables who make arrests on entirely unreasonable grounds, so long as they are not acting in bad faith, and accords them impunity for using all but grossly disproportionate force in so doing. Conscious of art. IX of the Bill of Rights 1689, we say only that there is no indication that Parliament was aware, much less intended, that what it was enacting would have this effect.
12. Counsel tell me that so far as they are aware, it remains the case that it is only police defendants who have invoked this provision.
13. The standard to be applied in considering whether the claimant has “evidence” of the relevant matters is whether the claim has a real prospect of success and in particular that there is a real prospect of the court concluding the conditions for permission are met (*Buikie v Chief Constable of West Yorkshire Police* [2009] EWCA Civ 971 at 4).

The approach is similar to the approach on a defendant's application for reverse summary judgment. Just as in a summary judgment application, the application should not turn into a mini trial.

14. In this case it is not in dispute that the act amounting to trespass occurred at a relevant time for the operation of s329.
15. Mr Thomas submitted on behalf of the Defendant that a trespass to the person must be a deliberate act, negligence does not suffice (*Letang v Cooper* [1956] 1 QB 232).
16. Mr Powell, on behalf of Mr Ward, submitted that to be a trespass the act must be deliberate or reckless where there was a foresight of risk of harm (*Haystead v Chief Constable of Derbyshire* [2000] 3 All ER 890). Further, a negligent act can amount to a trespass and can be grossly disproportionate, for example a failure to order PD Jerry to release. The claimant relies on *Breslin v McKenna* [2009] NIQB 50 para 16.
17. I accept the Claimant's submissions outline the correct test for my purposes. There is at least a real prospect of that argument succeeding.
18. In respect of negligence, the Defendant argues that in any event, there would be no real prospect of success on a claim in negligence because there is no duty owed to a fleeing suspect: *Vellino v Chief Constable of Greater Manchester* [2001] EWCA Civ 1249.
19. The Claimant submits that *Vellino* is authority only for the proposition that where a suspect is fleeing, there is no duty to take a positive act to prevent harm (in *Vellino*, to stop him jumping out of a window), but this is a case where force was deployed. *Vellino* is not authority for the broader proposition that there is no duty to a fleeing suspect at all. I accept the Claimant's submissions on that point for the purposes of this application.
20. In determining whether force used is grossly disproportionate, I must not place undue emphasis of the result of the force, namely the injury and severity (*McDonnell v Commissioner of Police for the Metropolis* [2015] EWCA Civ 573.)
21. Whether force is grossly disproportionate is to be assessed in all the circumstances and I should take into account the sorts of factors set out in *McDonnell* at paras 25-28. I should also bear in mind that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action: *Minio-Paluello v Commissioner of Police* [2011] EWHC 3411.
22. The Claimant's position is that in considering whether an act is grossly disproportionate, section 3 of the Human Rights Act 1998 requires that, insofar as possible, s329 must be read and given effect in a way which is compatible with convention rights including a principle that any use of force which is excessive and not necessitated by the conduct of an arrestee is a prima facie breach of the right to be free from human and degrading treatment,
23. The Defendant's position is that s329 would not prevent bringing an article 3 claim (that not being a claim for trespass), or indeed a negligence claim, and therefore there is no need to read s329 in such a way.

24. I note that in *Adorian*, the question of whether s329 applies to any claim in which the act amounts to trespass, or only to those in which the claim is in trespass was left open. In *McDonnell* the argument that s329 should be read in a way compatible with convention rights was raised, but again not decided.
25. Given the Defendant's position on the scope of s329 I do not need to decide whether s329 should be read and given effect as the Claimant submits. The Claimant will be free to seek to bring a claim under his convention rights irrespective of s329.

The grounds for permission

26. The Claimant puts forward three grounds on which permission should be given:
- (i) PC Jackson used grossly disproportionate force by instructing or permitting PD Jerry to bite Mr Ward's leg whilst he was handcuffed and detained on the ground;
  - (ii) PC Jackson used or allowed grossly disproportionate force to be used by PD Jerry to apprehend and detain Mr Ward;
  - (iii) PC Jackson did not hold an honest belief that it was necessary to permit or encourage the use of force by PD Jerry.
27. In respect of the first ground, Mr Powell submits that Mr Ward's account has credibility at this stage despite his previous convictions, and may be supported by evidence that PC Jackson has previously used force inappropriately and evidence that PD Jerry has acted similarly in previous cases. That is sufficient. Alternatively, failing to command PD Jerry to stop biting, if bitten once already restrained, was also the use of grossly disproportionate force. The act of deploying Jerry was intentional and it is artificial to separate the deployment and biting. It is accepted that the sequence of events is disputed, but taking Mr Ward's evidence at its highest, this would meet the test. The factual dispute about the sequence of events must be resolved at trial.
28. In respect of the second ground, it is argued that even on the Defendant's version of events, the ferocity, nature and duration of the force used by PD Jerry was grossly disproportionate. The failure to prevent PD Jerry from entering into what, in an interview, PC Jackson described as tug of war, at a stage (once bitten) that Mr Ward could not have posed a credible flight risk was grossly disproportionate. PC Jackson has a history of using inappropriate force and that, combined with the severity of the injury, indicates that the use of force went beyond what was necessary.
29. In addition, the absence of a warning that a police dog was being released is arguably grossly disproportionate. I note that the Defendant's position was initially that Mr Ward had said in interview that he would have run away even if he had heard a warning. During the course of the hearing, it was clarified that there was a transcription error. Mr Ward in fact said in interview that he would not have run had he been warned there was a police dog.
30. In respect of the third ground, PC Jackson allowed PD Jerry to bite or continue to bite Mr Ward once he was already detained or at a point where there was no real risk of

flight. At that stage it is argued PC Jackson cannot have had an honest belief that force was necessary.

31. It is not disputed by the Defendant that if PC Jackson was found to have instructed PD Jerry to bite Mr Ward after he was already detained on the ground, that would be grossly disproportionate force. In his skeleton, Mr Thomas also said that it would be grossly disproportionate to deliberately to allow PD Jerry to bite. The Defendant's position is that the Claimant has no real prospect of success of proving that PD Jerry was instructed to bite after Mr Ward was handcuffed.
32. Firstly, the Defendant submits that Mr Ward's account that he was handcuffed before he was bitten is so inherently incredible that it can be discounted. He would have to prove that PD Jerry did not arrive first to succeed. It must involve PC Jackson having out-run a police dog in order for PC Jackson to get there before PD Jerry.
33. In addition, Mr Ward gives no evidence at all as to any order being given by PC Jackson to PD Jerry after Mr Ward was handcuffed. There would have to be such an order for there to be a valid claim. Mr Ward would have to give evidence that such an order was given. The Claimant cannot base an allegation of grossly disproportionate force due an on officer not commanding a dog to bite him.
34. A failure to restrain PD Jerry and/or to tell the dog to disengage the bite can only be a negligent failure rather than deliberate. There is no real prospect of the Claimant showing that allowing the bite to continue was deliberate or that he encouraged the dog bite for an excessive period time. The whole incident only took 63 seconds so the bite must have been for only a few seconds. The most the Claimant can say is that PC Jackson failed to break off handcuffing him and put the dog under control. That cannot be grossly disproportionate.
35. There is no real prospect of a factual finding that PC Jackson did not give a warning before releasing PD Jerry. He says he did, Mr Ward was running away and his judgment was impaired due to taking speed and cannabis, so there is no real prospect PC Jackson's evidence will be rejected. In any event, even if he did not warn of a police dog, this would not render an otherwise reasonable use of force grossly disproportionate.
36. In respect of the prospect of evidence as to PC Jackson's propensity for inappropriate violence, the Defendant does not accept any such evidence would be admissible, but even if it was, it does not assist in this individual case.
37. There is no real prospect of success in a claim that the deployment of PD Jerry was made with an absence of an honest belief that force was necessary in the circumstances of a fleeing suspect wanted for burglaries who had just been driving dangerously and was heading into a site not known to PC Jackson. The police are not obliged to call the dog off until the suspect is under control.

#### Decision

38. The Defendant rightly accepts that if PD Jerry was ordered to bite Mr Ward once he was already detained, that that would amount to a claim in trespass for grossly

disproportionate force. It seems to me it is also correct that if he deliberately allowed PD Jerry to do so that would also be grossly disproportionate.

39. The Defendant's submissions that the evidence of Mr Ward is fundamentally flawed as it would for example involve PC Jackson outrunning PD Jerry are in my judgment submissions of the sort one would expect in closing argument after having heard the evidence.
40. Rejecting as flawed Mr Ward's evidence involves making judgments about what might be proved about how and when PD Jerry was deployed and what the order and sequencing of what happened in the 63 second period where the parties were not in view of the camera shot. That would in my view be conducting the sort of mini trial that I should not engage in.
41. I cannot at this stage, based on the witness evidence prepared so far, say there is no real prospect of Mr Ward's account that he was detained and then bitten being found to be proved. PC Jackson's evidence of the order of events might be rejected at trial.
42. The lack of Mr Ward giving evidence that he heard a command is not such a fatal flaw that at this stage it can be said there is no real prospect of success. There are range of possible findings, depending on the sequence of events found, that PD Jerry's bite was deliberately encouraged or intentionally allowed, be it the initial bite, or its continuation.
43. The fact that Mr Ward was under the influence of drugs, and has previous convictions for dishonesty, are matters a judge a trial will take into account if thought appropriate in deciding the facts. This is, in my judgment, a case where there is factual evidence which is in dispute and is the sort of matter which would not be dismissed or judgment given on a summary judgment application. The analysis undertaken by the Defendant in my judgment is in effect undertaking a mini trial.
44. I also accept that there is evidence which gives rise to a real prospect of proving the s329 matters on the Claimant's case in respect of the warning. Mr Ward's case is that there was no warning of a dog. PC Jackson says he did give such a warning. That is a factual dispute which can only be resolved a trial. Whether the release of PC Jerry without such a warning was grossly disproportionate will depend on the circumstances of the case as found by the trial judge. Whilst this is by no means a case where I can say at this stage that it would be grossly disproportionate, nor can I rule it out. The timing of the warning, the relative position of Mr Ward and PC Jackson will be relevant matters and those are matters for a trial.
45. If the Claimant is right and a claim for negligence would also require permission under s329, or that trespass can be reckless, it seems to me that the use of PD Jerry, be it initially or as a continuing force and failure not to order him to release Mr Ward, that claim also has a real prospect of success. I do not accept that *Vellino* goes so far as to say any positive action, or failure to stop that positive action does not give rise to a duty of care where a person is fleeing arrest.
46. I do not need to go on to deal with the Claimant's position about the honesty of PC Jackson's belief in the use of force as I have given permission, but in that case also seems to me to have a real prospect of success, for the same reasons as already



expressed, although there may be difficult arguments about what extra injury is caused by the prolonged biting.

47. In those circumstances I give permission under s329 for the claim in trespass to be brought.