

Neutral Citation no: [2024] EWHC 2864 (Admin)

Case No: AC-2024-BHM-000047

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

Birmingham Civil Justice Centre
Priory Court
33 Bull Street
Birmingham
B4 6DS

Date: 23rd October 2024

Before:

THE HONOURABLE MR JUSTICE EYRE

Between:

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- and -

(1) SIDNEY PRICE

Respondents

(2) KATIE DARBY

Alex Slater (instructed by the Crown Prosecution Service) for the **Claimant**
Samuel Skinner (instructed by **VHS Fletchers**) for the **First Respondent**
Arthur Kendrick (instructed by **VHS Fletchers**) for the **Second Respondent**

JUDGMENT
(Approved Transcript)

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Mr Justice Eyre:

1. On 3rd and 4th May of 2023 Sidney Price and Katie Darby (“the Respondents”) were tried before District Judge Khanna in Nottingham Magistrates’ Court. Both Respondents were charged with assaulting emergency workers acting in the execution of their functions. In addition, the First Respondent was charged with an assault with intent to resist lawful arrest.
2. The District Judge accepted defence submissions that there was no case to answer and dismissed all the charges at the close of the prosecution case.
3. The matter comes before me on the prosecution’s appeal by way of case stated.
4. I am grateful to all counsel, all of whom have come to the case recently and, in particular, to Mr Skinner and Mr Kendrick, for the Respondents, who have come into the case at very short notice.

The Factual Background.

5. It is necessary to set out the factual background in some detail.
6. The charges arose out of an incident at 9.45 pm on 28th January 2023. That occurred at 61 Cherry Holt in Newark. That is a property owned by Miss Darby and occupied by her and Mr Price.
7. Police officers attended at that property as a result of a call from Miss Darby’s mother.
8. The case stated summarises the evidence which was given by PC Flaherty. The material parts of that summary are as follows.

9. The police control had said that a report had been received that a man at the property had smashed up a kitchen belonging to Miss Darby. PC Flaherty's evidence was that when he arrived Miss Darby looked over the garden fence and that he could see make-up running down her face and that her eyes were puffed up. It was very clear to him that she had been crying. Miss Darby told the police officers that she was fine and asked them to leave. It was clear to PC Flaherty that she was not fine and that something had occurred at the address.
10. Miss Darby said "Please can you leave? You're going to antagonise the situation." She was very emotional and kept shouting at the officers and kept hold of the doorhandle to prevent PC Flaherty entering the address.
11. PC Flaherty told Mr Price to calm down and Miss Darby said, "Trust me. That's much calmer than he was before." She went on to say, "My mum just rang me and said, 'I've rang the fucking police', because she heard me screaming down the phone." PC Flaherty asked Miss Darby why she was screaming down the phone and Miss Darby replied, "Because he smashed my kitchen up. That's why."
12. PC Flaherty looked through the kitchen window and through the slats of the blind he saw a number of items smashed on the floor of the kitchen.
13. The officer then returned to the side door and could see that Mr Price was attempting to lock the door from the inside and that Miss Darby was encouraging him to do so. Miss Darby was becoming more emotional and distressed. She said that she and Mr Price had caused the damage together.
14. PC Flaherty's evidence was that he decided to arrest Mr Price because of the information he had received that Miss Darby had phoned her mother and told her that

Mr Price had smashed her kitchen up which Miss Darby had confirmed during his conversation with her. In addition while looking through the window he had seen damaged items on the floor of the kitchen.

15. The police officers had body-worn cameras mounted on their uniforms. The District Judge appended the footage from those cameras to the case stated. He presumably did so in order that it could be viewed on the appeal. I have viewed that footage but I make it clear I approach the appeal on the footing that the relevant evidence is that which is set out in the text of the case stated. Any impressions I have personally formed from viewing the footage do not advance the matter at all.
16. Mr Price faced two charges. One of assaulting PC Flaherty as an emergency worker acting in the exercise of his functions as such. The second was that of assaulting PC Flaherty with intent to resist or prevent lawful apprehension. The former being the offence under section 1 of the Assaults on Emergency Workers (Offences) Act 2018, and the latter being an offence contrary to section 38 of the Offences Against the Person Act 1861. Miss Darby was charged with three charges under the Emergency Workers (Offences) Act, namely assaults on PCs Skilling, Shortley and Flaherty.
17. The alleged offences were all said to have occurred as the police officers forced their way into the property to effect the arrest of Mr Price.

The District Judge's Decision.

18. In the case stated the District Judge summarised his approach and the conclusion he reached. He said this:

“I dealt with submissions under section 17.1(e) of PACE swiftly as from the evidence in the trial it was clear that the police had not forced their way into the property for the purpose of saving life or limb or to prevent serious damage to the property. Instead the evidence of the officers was that they

entered the property to arrest Mr Price for an indictable offence under the provisions of section 71(b) of PACE.

“The offence here was one of criminal damage. I asked myself what evidence there was of any criminal damage. There was the telephone call to the police from Miss Darby’s mother, but she had not witnessed anything and was not even in the vicinity of the property. The officers stated in their evidence that they saw some items smashed on the kitchen floor, so there was some damage, albeit nowhere near the definition of being ‘smashed up’. The question was whether the damage they had seen was actually evidence of criminal damage.

“In order to be criminal damage without any other witness evidence there had to be a complaint of criminal damage, because causing damage itself is not an offence. Causing damage becomes criminal damage when there is a complaint and complainant, particularly if there are no witnesses to the damage. In this case Miss Darby was the owner of the property. She confirmed the damage had been caused initially by Mr Price, then by her, and finally by both of them. However, at no point did she seek to make a complaint. Indeed, from the body-worn video evidence of the officer, she positively stated that she did not want the police there, she had not called them, and she was not making any complaint about the damage.

“It followed, in my judgment, that there was no evidence of any criminal damage and so no offence for which the police needed to arrest anyone, in particular Mr Price. It therefore followed that there was no lawful right for the officers to forcibly enter the property.”

19. The District Judge then quoted from the judgment of Collins J, in the case of *Syed v DPP* [2010] EWHC 81 (Admin) about police officers being “damned if they do and damned if they don’t” in domestic violence cases, but then said this:

“Due to the reasoning set out above, I found that the officers were not acting in their functions as emergency workers at the material time, so the charges had to fall.”

The Case Stated.

20. The District Judge formulated the question for this court as follows:

“Was I correct to conclude that in the absence of a formal complaint of criminal damage by the female defendant, Katie Darby, at that time that the police were acting outside of their functions as emergency workers in entering the property to arrest Dean Price?”

21. The approach of the District Judge as set out in the case stated shows that that question in fact includes at least two sub-questions. The first, did the District Judge adopt the correct approach to the issue of whether the officers were entitled to arrest in these

circumstances? Second, was the District Judge's conclusion as to whether the officers were entitled to arrest conclusive of whether they were acting in the exercise of their functions as emergency workers?

22. The approach I have to take on this case stated appeal is that the case stated as formulated by the District Judge must be read realistically and in context. The first question for me is whether the District Judge applied the correct legal test. If reading the case stated sensibly, realistically and in context I conclude that the District Judge did apply the correct test then the appeal fails. In those circumstances it is immaterial that the test was not expressed as elegantly or as clearly as might be desirable. As Mr Skinner said, "The exercise for the District Judge was not writing an essay paper for an exam". I have to consider the substance of what the District Judge did and of the tests he applied.
23. However, the correct legal test must be applied. If the District Judge did not apply the correct test the appeal will succeed unless I can conclude that the District Judge would inevitably have reached the same conclusion if he had applied the correct test. In the circumstances here that means that if the District Judge did not apply the correct test the appeal will succeed unless I conclude that he would necessarily, and as a matter of correct interpretation of the law and the evidence, have dismissed the case at the conclusion of the prosecution case.

The Law.

24. The applicable law is not in dispute but needs to be set out in some detail.
25. Section 38 of the 1861 Act provides that:

“Whosoever shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanour ...”

26. The material parts of section 24 of the Police and Criminal Evidence Act of 1984 are:

“(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

...

(4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.”

(5)

...

(c) to prevent the person in question—

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

...

(d) to protect a child or other vulnerable person from the person in question”

27. Section 117 of that Act states that where a constable has a power under the Act, “the officer may use reasonable force, if necessary, in the exercise of the power”.

28. Then section 17 of the Act provides as follows:

“(1) Subject to the following provisions of this section, and without prejudice to any other enactment, a constable may enter and search any premises for the purpose --

[...]

(b) of arresting a person for an indictable offence;

[...]

(e) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (e) of subsection (1) above, the powers of entry and search conferred by this section --

(a) are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises; ...”

29. Those are statutory provisions governing powers of entry and of arrest. What is their effect?
30. The position was set out by Stuart-Smith J, as he then was, in the case of *Parker v Chief Constable of Essex* [2017] EWHC 2140 (QB) at [11] – [14]. At [14] Stuart Smith J identified the relevant questions as being:
- “(A1) Did the arresting officer suspect that an offence had been committed? The answer to this question depends entirely on the findings of fact as to the officer’s state of mind. “(A2) Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely objective requirement to be determined by the Court.
- “(1) Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer’s state of mind.
- (2) Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.
- (2A) Did the arresting officer believe that for any of the reasons mentioned in subsection (5) it was necessary to arrest the person in question? The answer to this question depends entirely on the findings of fact as to the officer’s state of mind.
- (2B) Assuming the officer had the necessary belief, were there reasonable grounds for that belief? This is a purely objective requirement to be determined by the judge, if necessary on facts found by a jury.
- (3) If the answer to the previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion the question arises as to whether the discretion has been exercised in accordance with the principles laid down by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223.”
31. That case went to the Court of Appeal ([2018] EWCA (Civ) 2788, [2019] 1 WLR 2238) but Stuart-Smith J’s formulation of that test was not an issue on the appeal. For current purposes the relevant aspect is the consideration by the then President, Sir Brian Leveson, of the test for reasonable suspicion. He said this at [115]:

“The bar for reasonable cause to suspect set out in s. 24(2) of the 1984 Act is a low one. It is lower than a *prima facie* case and far less than the evidence required to convict [...] Further, *prima facie* proof consists of admissible evidence, while suspicion may take account of matters that could not be put in evidence [...]. Suspicion may be based on assertions that turn out to be wrong[...]. The factors in the mind of the arresting officer fall to be considered cumulatively[...].”

And then at [123]:

“What is required is actual belief that the arrest was necessary and, objectively, that the belief is reasonable.”

32. Sir Brian Leveson based those propositions in part on the decision of the House of Lords in *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286. I have taken account of the passages in the speeches of Lord Steyn at [293] (c) to (d) and of Lord Hope at [298] (a) through to (g) in that decision. Their lordships explain there that matters can cause reasonable suspicion even if they subsequently turn out to be wrong and or are based on material which would not be admissible in evidence.
33. Section 1(1) of the 2018 Assaults on Emergency Workers (Offences) Act provides that:

“The section applies to an offence of common assault, or battery, that is committed against an emergency worker acting in the exercise of functions as such a worker.”
34. It is not a precondition of an emergency worker acting in the exercise of their functions that they must be acting lawfully. That point was established and set out in two decisions of the divisional court.
35. In *Campbell v Crown Prosecution Service* [2020] EWHC 3868 (Admin), at [2] Popplewell LJ, with whom William Davis J agreed, identified the issue as being:

“... whether a police constable must be acting lawfully in order to be ‘acting in the exercise of functions’ as an emergency worker within the meaning of s.1(1) of the 2018 Act.”

36. The relevant part of the judgment for current purposes is [16] to [24]. The position was explained at [16] as follows:

“In my view it is clear that the expression ‘in the execution of his functions’ in s.1 of the 2018 Act is not to be construed in the same way as the expression ‘in the execution of his duty’ in s.89(1) of the 1996 Act, and imports no requirement that the emergency worker be acting lawfully.”

37. Popplewell LJ then explained the reasons why he had reached that conclusion. For current purposes I need only repeat the first of those reasons.

“[17] First, the language of s.1(1) of the 2018 Act makes no reference to duty or lawfulness, but only to carrying out functions. ‘Function’ is a word which connotes an activity and a role in which the activity is undertaken. ‘Duty’, on the other hand, is a word connoting responsibility or obligation. It would be impossible to describe a police officer as acting in the execution of her duty when acting unlawfully because her duty is to act lawfully. It would, however, be a perfectly natural use of language to describe her as exercising the function of a police officer when conducting police activity, even if in doing so she mistakenly exceeds the special powers granted to her in that capacity. The appellant’s argument seeks to construe s.1(1) as if it said: ‘An offence of common assault or battery that is committed against an emergency worker lawfully acting in the exercise of functions as such a worker ...’ That is not what the statute says, and the use of the word ‘functions’ suggests that that is not what it means. The plain wording of the section indicates that it applies in a broad manner to the activities of a constable, which is not the same as the narrower concept of the lawful exercise of a constable’s duty.”

38. Then at [21], having set out the reasoning, Popplewell LJ said:

“It is, therefore, the status of being an emergency worker which attracts the added protection provided the worker is acting in that role, not whether some duty is being performed at the time.”

39. The question was also addressed in the case of *DPP v Ahmed* [2021] EWHC 2122 (Admin), [2022] 1WLR p.314, where the President of the King’s Bench Division handed down the judgment of the court. At [10], referring to the decision of the justices in that case, the President said, invoking the decision in *Campbell v DPP*:

“The justices’ conclusion that there was no distinction between the duty of a police officer (for the purposes of section 89(1) of the Police Act 1996 and the functions of a police officer (for the purposes of section 1(1) of the 2018 Act) was erroneous ...”

40. At [23] and [24] the President said:

“[23] We were invited by both parties to provide general guidance on the scope of the term ‘functions’ within section 1(1) of the 2018 Act. Two matters are clear. First, whether an emergency worker was exercising a function at the time of an alleged assault is a fact-specific and objective question. Secondly, there are limits to the concept of function, so that not everything done by an emergency worker when apparently going about his or her day-to-day business can properly be so described. We agree with Mr Mably QC that, to take an extreme case, if a police constable for example committed a sexual assault in the course of an arrest, the constable would not be carrying out his or her functions.

“[24] Nonetheless, without intending to provide comprehensive guidance, in our view, proportionate and good-faith actions by the police to assist those who appear to be in distress, or to be at risk of causing harm to themselves or others, would in principle likely be within the concept of police ‘functions’, whether or not some form of touching or handling of a person takes place in the course of such conduct. [...] As explained in Campbell, section 1 is intended, in the context of the work of the police, to capture the broad everyday activities of police officers for the purposes of considering whether an assault upon them takes its statutorily aggravated form or not. Justices and juries can be expected to approach that question with, we apprehend, a degree of commonsense.”

The Issue between the Parties.

41. The Appellant contends that in light of that analysis the District Judge should have asked himself the following questions when determining the legality of the entry into the premises to arrest Mr Price. First, did PC Flaherty suspect that an indictable offence had been committed by Price? The answer to that question depended entirely on the findings of fact as to the officer’s state of mind at the material time. Second, assuming that the judge found as a fact that PC Flaherty had the necessary suspicion, did he have reasonable grounds for that suspicion? This is a purely objective assessment made in light of the information known to the officer at the time. Third, did PC Flaherty believe that for any of the reasons mentioned in section 24(5) of PACE it was necessary to use force to enter the premises to arrest Price? Again, the answer to that depends entirely on the findings of fact as to the officer’s state of mind. Fourth, assuming that PC Flaherty had the necessary belief, were there reasonable grounds for it? That is, again, a purely objective assessment.

42. The Respondents did not disagree with that summary of the relevant questions. The issue between the parties boiled down to whether, on a proper reading, the District Judge had in reality asked himself those questions. The Respondents contend that, on a fair reading of the case stated, that was what the District Judge had done. In particular, they say the District Judge was to be seen as having focused on whether the suspicion which PC Flaherty had was a reasonable suspicion.

The District Judge's Approach to the Lawfulness of the Entry.

43. I turn, therefore, to the assessment of the District Judge's approach to the lawfulness of the entry by the police officers into the property. This turned on the District Judge's assessment of the lawfulness of PC Flaherty's action in seeking to arrest Mr Price for criminal damage.
44. The key question in the circumstances of this case was whether there was reasonable suspicion that an offence had been committed. There were other matters to be considered, but that was the core question.
45. The District Judge applied the test of whether there was evidence of criminal damage and did so on the footing that without a complaint from the owner of the property there could not be evidence of criminal damage.
46. I have considered whether the language used by the District Judge could be seen as a shorthand or paraphrase of the correct test: namely the question of the presence or absence of reasonable suspicion. I am entirely satisfied that such a reading is not possible. The wording of the question posed by the District Judge in the case stated makes that clear that even if nothing else does. That is because the question for the court is said to be whether the District Judge was right to conclude that, in the absence

at the time of a formal complaint of criminal damage from Miss Darby, the police were acting outside their functions as emergency workers when entering the property to arrest Mr Price.

47. It is necessary, nonetheless, to look at the matter in a little more detail. That is because Mr Skinner and Mr Kendrick say that when read in context the District Judge is to be taken as having applied the correct approach and to have considered whether there was reasonable suspicion of the offence of criminal damage.
48. Mr Skinner points out that the District Judge talks of “evidence”, not of admissible evidence. In effect, Mr Skinner says, the District Judge is to be seen as asking whether there was material which could indicate criminal damage and so form the basis of a reasonable suspicion. Mr Skinner also says that the District Judge was right to focus on the absence of a complaint from Miss Darby as the owner of the property because without that the prosecution would not be able to prove that Mr Price had acted without lawful authority.
49. Mr Kendrick focused on the passage in the case stated beginning with the question, “I asked myself what evidence there was of any criminal damage”. He says that passage shows that in reality the District Judge was looking for the existence of matters which could, on an objective basis, form grounds of reasonable suspicion. The District Judge was, accordingly, considering whether the suspicion held by PC Flaherty was reasonable and was doing so by considering the evidence.
50. I cannot accept that analysis. The fact that the District Judge did not articulate the correct test is not conclusive but it is a relevant factor. If the correct test is not articulated then considerable care is needed in reading of the case stated for the court to be able to conclude that the correct test was in fact applied.

51. Here, the reality on the sensible, and in my judgement the only tenable, reading of the case stated is that the District Judge was applying a different test. He was applying the test of whether there was sufficient evidence to establish a *prima facie* case of criminal damage and was approaching the matter on the footing that unless an offence of criminal damage had been established, at least on the *prima facie* basis, then the entry was unlawful. That reading follows not just from the question posed in the cases stated, though that is significant, but also from this passage in the case stated where the District Judge said this:

“It follows, in my judgment, there was no evidence of any criminal damage and so no offence for which the police needed to arrest anybody, in particular Mr Price. It therefore followed there was no lawful right for the officers to forcibly enter the property.”

The only way of reading that passage, even when all due allowance is given and proper regard is had to the context, is that the District Judge was looking to see whether there was evidence of the offence of criminal damage and that, having concluded there was no evidence which would establish that, saying that there was no need for an arrest. He was doing that rather than looking to see whether there was a basis for a reasonable suspicion of such an offence.

52. It follows therefore that the District Judge applied the wrong approach to the question of lawfulness of arrest and of entry.

53. If, contrary to that interpretation, the District Judge was in fact applying the test of reasonable suspicion, then he was doing so not only without articulating it but doing so, moreover, on the footing that there could be no reasonable suspicion without a complaint from Miss Darby. I do not accept that is a proper approach to the question of reasonable suspicion of the offence of criminal damage. There can be reasonable suspicion even if the owner of the damaged property is not, at the point of arrest,

alleging criminal damage. That is particularly in circumstances, such as those here, where an allegation of unlawful damage to property had been made but had been retracted in circumstances where there was concern about the effect on Miss Darby of Mr Price's conduct and so as to the voluntariness of that retraction.

54. Therefore, the wrong test was applied. Would application of the correct test inevitably have led to the same result, namely the dismissal of the charges?
55. It would not. There is scope for argument as to whether the officers had reasonable suspicion and grounds for entering the premises but it is not inevitable that applying the correct test the District Judge would have concluded that there was no reasonable suspicion and so no grounds for entry. At the very least, there would have been scope for a court to conclude that there was reasonable suspicion based on: the fact of the initial call; the emotional state of Miss Darby; the aggression shown by Mr Price and his actions; the damage seen; the comment from Miss Darby that her kitchen had been smashed up; and the circumstances of the retraction of that comment. It follows that dismissal of the charges would not have been an inevitable consequence of the application of the correct test.
56. As the District Judge's conclusion as to whether the officers were exercising the functions of emergency workers was predicated on his view as to the lawfulness of the entry the appeal must succeed.

The District Judge's Approach to the Offence of Assaulting an Emergency Worker.

57. For completeness, I will address the District Judge's approach to the offence of assaulting an emergency worker.

58. The District Judge's approach to that question was also flawed. This was because he took the view that his conclusion as to the lawfulness of arrest was also conclusive of the question of whether the officers were acting in the exercise of their functions. The decisions in *Campbell* and *Ahmed* show that that is not the correct test. The questions of whether the officers were acting lawfully and whether they were exercising their functions were separate questions and lawfulness is not a precondition for an officer to be exercising a function as an emergency worker. Lawfulness will, of course, be highly relevant to the question of whether an officer is exercising his or her function as an emergency worker. As indicated in *Ahmed* an officer committing an offence may well be acting outside their function as an emergency worker. Nonetheless, the tests are different and unlawfulness is not determinative of the question of whether an officer is or is not acting in exercise of the function of an emergency worker.
59. In those circumstances it follows that the District Judge did not apply the correct test. It cannot be said that he had regard to the question of whether the officers were exercising their functions and that he took lawfulness into account as a potentially relevant factor in answering that question. Rather the District Judge regarded his conclusion as to lawfulness as determinative and as necessarily meaning that the officers were not exercising the function of emergency workers.
60. In any event and as I have explained above this aspect of the District Judge's reasoning, was based on his erroneous approach to the question of the lawfulness of the entry and must fall away as a consequence of my finding in that regard.

Conclusion.

61. It follows that the appeal is allowed.

(Proceedings continue)

The Order to be made.

62. I have to consider what order to make consequent upon the judgment I have just delivered allowing the appeal.
63. The options I have are as follows.
64. One course would be to allow the appeal but not to remit the matter to the magistrates' court. That is not urged on me by either of the Respondents or by the Appellant. It would be a course that is open to me and, as Mr Skinner points out, the underlying matter is of some age. It would, however, run the risk of those who are potentially guilty of assaults on emergency workers not being tried and not, if the charges are made out, convicted. There is a considerable public interest in assaults on emergency workers and assaults made in resistance to arrest being properly litigated. There is also an interest on the part of the Respondents in the matter being resolved one way or the other. I am, therefore, not going to adopt this course.
65. Mr Slater for the Appellant urges me to remit the matter to a freshly constituted bench or to a different District Judge for a retrial against the background of the judgment I have given. The alternative course, for which the Respondents' counsel contend is to remit the matter to DJ Khanna for him to determine the application to dismiss the case at half time in the light of the analysis of the law set out in my judgment.
66. The course sought by the Appellant would involve starting the trial from scratch. Mr Slater urges that course on me in essence because of a concern that the District Judge's approach on the facts was tainted by his mistaken view on the law. I am not persuaded by that. The District Judge has made findings of fact. He did so after he had

heard the evidence. It is not suggested that the findings of fact as to what actually happened were incorrect. Indeed, in reality there is not much dispute about what actually happened, shown as it was in the body-worn footage. The real issue is to the proper interpretation of what happened.

67. I am satisfied that, in light of my articulation of the proper legal test, DJ Khanna will be able perfectly adequately to reach a sound decision on the application to dismiss the case for want of evidence. So the matter will be remitted to that District Judge for him to determine in the light of the judgment I have given.

(End of judgment)

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