



Neutral Citation Number: [2024] EWHC 3120 (KB)

Case No: KA-2024-000041

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 December 2024

Before :

MR JUSTICE SHELDON

Between :

NATASHA CARR

Claimant

- and -

**CHIEF CONSTABLE OF KENT
CONSTABULARY**

Defendant

Anthony Metzger KC (instructed by **Taylor Rose Solicitors**) for the **Claimant**
Mark Ley-Morgan (instructed by **Weightmans**) for the **Defendant**

Hearing dates: 21 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 5 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Mr Justice Sheldon:

1. Natasha Carr (the Appellant) seeks permission to appeal from the decision of Her Honour Judge Brown, sitting in the County Court at Canterbury, dismissing her various claims against the Chief Constable of Kent Constabulary (the Respondent), with respect to incidents that occurred in late 2015 and early 2016. At the end of the trial which had lasted 9 days, the learned judge gave an *ex tempore* judgment. At the trial, Her Honour Judge Brown sat with a jury, but she did not leave any of the material questions that arise on this appeal to the jury. Permission to appeal from the learned judge's decision was refused on the papers by Cotter J on 13 June 2024. The application for permission to appeal was renewed orally before me by Anthony Metzger KC, acting for the Appellant. Mark Ley-Morgan appeared for the Respondent. Both counsel had appeared for their respective clients in the County Court.

Factual Background

2. On the evening of 24 June 2015, a 999 call was received by the Respondent reporting a disturbance in Victoria Road, Margate. Officers attending the call, PC Faulkner and PC Finn, found that there was a house party being held in Flat 2, 48 Victoria Road (the flat). The flat belonged to the Appellant. On entering the flat, the officers discovered that the party was for a 16 year old and there were about 20 youths present. Alcohol was being consumed. The officers told the Appellant that her neighbours had complained and the party should be closed down. They said that if there were further complaints they would return.
3. Later that evening, at 22:40, a call was received by the police from one of the Appellant's neighbours, reporting that bottles were being thrown out of the flat and were smashing in her garden, and that people were smoking "weed". At around 22.50, three officers entered the flat: PCs Faulkner, Finn and Long. The Appellant was spoken to. The Appellant asked the officers to leave, but they did not do so. At 23:08, PC Long arrested the Appellant for child neglect: in connection with her young child, Chase, who was present at the flat during the party. The Appellant was taken to Margate Police Station, where she was detained for a period of 16 hours. The Appellant suffered some physical injury as a result of being put in handcuffs when she was arrested.
4. On 24 November 2015, at 08:20, the Appellant was arrested by PC Godden for burglary of, and criminal damage to, her neighbour's flat. She was detained until 15:24. Whilst in custody, the Appellant ripped her pillow and wrote on the wall of her cell in hot chocolate. She was arrested for causing criminal damage whilst in her cell. The Appellant was released on bail with conditions that she should not contact the neighbour or other witnesses.
5. On 4 January 2016, at 10:55, the Appellant answered her bail and was informed that she was to be conditionally cautioned for the criminal damage that she had caused in her cell. The Appellant was detained in custody until 14:35.

The Claim

6. The Appellant issued a claim for: (i) trespass (entering her property on 24 June 2015 at 10.50pm without licence or consent, without warrant, otherwise than for the lawful purpose of arresting person, staying there until 23:50); (ii) false imprisonment ((a) on

24/25 June 2015: the Respondent did not have reasonable grounds to suspect that the Appellant had neglected a child, or committed any offence, and it was not necessary to arrest her; and in any event the detention was excessive; (b) on 24 November 2015, the Appellant was unlawfully arrested and detained for around 7 hours, in circumstances where the Respondent did not have reasonable grounds that the Appellant had committed burglary, or any offence, and it was not necessary to arrest her, and her detention for criminal damage was not authorised; and in any event the detention was excessive; and (c) the Appellant's detention on 4 January 2016 for 3 ½ hours was not necessary); (iii) assault and battery: the use of handcuffs on 24 June 2015 was unnecessary and/or excessive and she sustained swelling and bruising to the wrists as a result; and (iv) misfeasance in public office: the Respondent's officers acted with malice and/or bad faith in arresting the Appellant for child neglect, and in informing Social Services of her arrest for child neglect, and in informing her to attend the police station on 4 January 2016 to collect her phone, concealing the fact that she would be further detained/cautioned for criminal damage.

Grounds of Appeal

7. The Appellant seeks to appeal from Her Honour Judge Brown's judgment on 9 grounds.
 - (1) Without providing any, or any adequate reasons, the learned judge wrongly permitted the Respondent to amend its Defence to the Appellant's trespass claim to permit a wholly new defence of consent, when all the evidence had been completed and only after the Appellant's closing submissions had been advanced, thereby causing the Appellant irreparable prejudice whilst permitting the Respondent to have a new basis to succeed in the claim;
 - (2) Alternatively, if the learned judge was correct to allow the alternative defence to be advanced, she was wrong not to permit the jury to consider a factual issue namely whether the Appellant gave express or implied consent to PC Faulkner and PC Finn to enter her flat from their 10pm visit and/or whether that consent was vitiated when she repeatedly demanded that they leave;
 - (3) Further or alternatively, the Learned Judge wrongly dismissed the Appellant's claim in trespass by failing to give good or adequate reasons as to why the Respondent was able to establish defences of consent and/or actual or apprehended breach of the peace and/or s 17 (6) Police and Criminal Evidence Act 1984 (PACE 1984);
 - (4) The Learned Judge wrongly refused to permit the jury to consider significant disputed issues of fact in relation to the Appellant's first arrest for child neglect;
 - (5) The Learned Judge wrongly refused to permit the jury to consider significant disputed issues of fact in respect of the Appellant's claims in misfeasance;
 - (6) The Learned Judge wrongly found that the Appellant's second arrest for burglary and criminal damage was necessary in all the circumstances;
 - (7) The Learned Judge wrongly refused to permit the jury to consider significant disputed issues of fact in relation to the Appellant's third detention, namely whether she was to be informed that she was to be conditionally cautioned before her arrival

at the police station and/or whether she insisted on having an appropriate adult on that day before being detained in custody;

- (8) The Learned Judge wrongly dismissed the Appellant's third detention claim in finding that detention short of arrest with admitted breaches of the Code of Practice under Codes C and G and in the application of paragraphs 34 and 37 PACE 1984, was lawful. This is a matter of law, with an important issue of public interest of principle in relation to police forces throughout the country;
 - (9) The Learned Judge wrongly found that the Appellant's third detention was necessary in all the circumstances.
8. As I will explain, I consider that Grounds 1-6 are not arguable and permission to proceed with those grounds shall be refused. Grounds 7-9 are arguable and these can proceed to a full hearing of the appeal. They are discrete grounds concerning the detention of the Appellant on 4 January 2016.

Grounds 1-2: Trespass

9. The Appellant contends that the decision of Her Honour Judge Brown to allow the Respondent to amend his pleadings to defend the claim for trespass on the basis of consent after the close of the evidence and after the Appellant's closing submissions was unlawful. I do not consider that this ground of appeal is arguable.
10. The learned judge gave detailed reasons for her decision: sufficient for the Appellant to know why the decision had made.
11. Her Honour Brown's reasoning with respect to this matter was as follows:

“7. This allegation is in relation to what has been called the “11pm visit”, although it, in fact, started shortly before 11 o'clock at night.

8. The claimants¹ took a pleading point, as they were entitled to do, in that the amended defence at paragraph 12 only relied on section 17(6) of the Police and Criminal Evidence Act 1984 or common law, namely, entry to deal with and/or prevent a breach of the peace. However, the evidence of PC Falconer was equivocal and the defendant argued that, even if he did not have in mind a breach of the peace at the time that he entered the flat during the 11pm visit, he was, in any event, entering with the consent of the occupier, namely the first claimant, Natasha Carr.

9. The claimants opposed the amendment on the grounds that the claimants' case has been clearly pleaded at paragraph 3(a) of the particulars of claim on the basis that entry was without the claimants' licence or consent. Further, it was alleged that the claimants would be prejudiced if the amendment were permitted at this late stage. It was said that there would have been further

¹ There were initially two claimants in the case: the Appellant (the First Claimant) and her daughter (the Second Claimant). There was no appeal with respect to the daughter.

challenge to PCs Falconer and Long on the issue had the claimants appreciated that it was a live issue and/or re-examination of the first claimant herself.

10. I do not accept that any further questioning of PC Falconer or PC Long or further re-examination of the first claimant would have taken the matter any further. The issue turned primarily on what the first claimant herself said in the course of the earlier 10pm visit, which is recorded on the bodyworn video (and we have a transcript of it), what she said in her evidence that she meant by what she said, and what she did or did not do when the police returned at shortly before 11pm.

11. In the same way that I permitted the claimants to amend their claim mid-trial so as to accurately reflect the evidence in the case, I permitted the defendant to re-amend to plead consent and to clarify their case as set out in the draft attached to the application to amend, notwithstanding the lateness of the application. In my judgment, there is no prejudice to the claimants in permitting the amendment. The evidence dealt with the issue to the extent that was necessary and permitting the amendment avoids the case being determined on an artificial basis that does not reflect the evidence of the witnesses of both parties.”

12. I consider that this decision to allow the very late amendment was one that was clearly open to the learned judge as a matter of case management. Not to allow the amendment would mean that the case would be determined on an “artificial basis” that did not reflect the evidence of the parties’ witnesses.
13. The learned judge considered that the Appellant would not suffer irremediable prejudice as a result of the late amendment, as the evidence of consent was clear from the Appellant’s own evidence and the Appellant was not disadvantaged in not being able to ask further questions of witnesses about the matter. This was a permissible finding given the evidence that had been presented to the Court.
14. I note in this regard that in a witness statement for the civil proceedings signed by the Appellant on 18 December 2020, she referred to the initial visit to her flat by PC Faulkner, and told him that “I also made clear that if he had any further calls regarding the party, I would totally respect the police coming back. He agreed . . .”. The Appellant was questioned about this by her counsel at the outset of her evidence to the County Court. She was also cross-examined about it by Mr Ley-Morgan. He asked her what she meant by that, and the Appellant said: “I mean he could come and do what he wanted to do originally (inaudible) home”. PC Faulkner was asked about his entry to the flat by the Appellant’s counsel, and he said that “I was given permission by [the Appellant] to re-enter should there be another call.”
15. The Appellant’s counsel also referred to the later situation where consent was specifically withdrawn: “you accept that later on in that incident consent, if there was consent for you to enter, had been completely withdrawn repeatedly by [the Appellant].

That she made it clear you should leave”. It was implicit in this line of questioning that there might have been consent given by the Appellant to the initial entry.

16. In addition, it was open to the learned judge to take into account what actually happened after the officers did enter the flat. It was not until 23:08 that the Appellant specifically asked the officers to leave. Until that point, it can be implied that the Appellant – knowing that the officers were in her flat, and knowing her rights (there is reference in the evidence to her knowing about the relevant law) – consented to them being there.
17. I also consider that it is not arguable that the learned judge erred in withdrawing the factual issue from the jury as to whether consent (express or implied) had been given to PC Faulkner and PC Finn when they initially entered the flat. When sitting with a jury, the judge should leave questions for the jury where there is a dispute issue of fact with respect to which different outcomes are possible. If only one outcome is possible, then the judge can determine the issue herself. On the question of consent, Her Honour Judge Brown was entitled to conclude that there was only one possible finding on the basis of the evidence: that consent had been given. This, it seems to me, is the only possible inference from the evidence presented to the County Court. As Her Honour Judge Brown explained:

“12. . . . There is no conflict of evidence concerning this matter. The defendant relies upon the words said by the first claimant shortly before PC Falconer left the flat following the 10pm visit, the second claimant leaving the door open when she went upstairs to get the first claimant, as PC Falconer had requested, he having requested her to get her mother, as an adult; neither the first claimant nor the second claimant articulating any objection to the presence of the police officers in the flat until a much later time (as to which, more later); and the first claimant positively asking the police officers to assist her in clearing the flat.

. . .

15. In my judgment, since there is no dispute about the underlying facts, the only question is what inference should be drawn from the undisputed facts in order to determine whether or not the entry of PCs Falconer and Finn was lawful or not. In my judgment, that is not a matter of fact on which I, as the judge, need assistance from the jury. I have the material on which an inference can be drawn or not.

16. Having considered all of the circumstances, including, but not limited to, the words said by the first claimant, and what both she and the second claimant did or did not do in response to the officers entering the flat, in my judgment, on the balance of probabilities, the defendant has proved that both PCs Falconer and Finn did enter the flat with the consent of the first claimant.

17. Further, if I am wrong about it not being a jury question, I would have declined to leave it to the jury on the basis that, in

the circumstances of this case, no reasonable jury, properly directed, could properly have declined to draw an inference that the officers entered with the implied consent at least of the first claimant.”

Ground 3-5: Trespass and Child neglect, and misfeasance

18. As for whether the learned judge erred by declining to put to the jury the question as to whether the officers were lawfully present at the flat once the Appellant had specifically asked them to leave, and had therefore withdrawn consent, this is tied up to some extent with ground 4: whether there were reasonable grounds that the elements of the offence of child neglect were made out at the time of the Appellant’s arrest.

19. Her Honour Judge Brown explained her reasoning as to why the claim for trespass with respect to the later period did not need to be considered by the jury:

“22. There is not in my judgment a proper evidential basis for a question to the jury relating to the circumstances as they existed when consent was withdrawn. The bodyworn video plainly, in my judgment, supports the officers’ evidence concerning their perception of the situation and shows the events shortly thereafter, including the second claimant attacking her brother and an apparently drunk guest picking up Chase (a two-year old boy) in a way that was plainly correctly perceived by PC Faulkner to place him in potential danger. That evidence, in my judgment, demonstrates the accuracy of the officers’ assessment that there was an actual or imminent breach of the peace at that time.

23. Further, PCs Falconer and Long had the additional lawful reason for remaining, which was the common law duty to protect Chase, the first claimant’s two-year-old child, from suffering injury and/or the section 17(1)(e) power pursuant to the Police and Criminal Evidence Act 1984 to protect Chase. For reasons I will come to, no reasonable jury, properly directed, could come to a different conclusion.

24. Finally, once the first claimant was arrested, the defendant has in my judgment proved that the police officers were entitled to remain at the property at common law and/or pursuant to section 17(1)(e) to protect Chase until the arrangements for his care that night were finalised and agreed by social services.”

20. With respect to the defence of actual/apprehended breach of the peace, this was articulated by Her Honour Judge Brown in several paragraphs: paragraph 18-22. It is simply untenable to argue that good or adequate reasons were not provided with respect to this matter.

21. Her Honour Judge Brown then dealt with the question of child neglect in considerable detail: paragraphs 27 to 47. The Appellant seeks to challenge the learned judge’s analysis and decision not to leave the matter to the jury by contending that there were

important factual matters in dispute. It seems to me, however, that Mr Metzger KC's arguments amount to nit-picking, and do not address the essential findings made by the learned judge. The learned judge's findings in those paragraphs conclusively deal with the allegations of misfeasance. I can do no better than repeat what Cotter J said about these matters in his reasons for refusing permission on the papers:

“Having reminded herself that reliance may be placed on circumstantial evidence and inference rather than just direct evidence (referencing **Paul-v-Chief Constable of Humberside** [2004] EWCA Civ 308) the Judge was entitled, having undertaken a careful analysis (see Judgment paragraphs 27-53) to conclude there was no direct or inferential evidence to challenge PC Long's evidence that he had reasonable belief in relation to child neglect (this being, as the Judge observed a relatively low threshold). As a result there were no issues of fact for the jury. As the judge stated a belief that the child was at foreseeable harm due to proximity to the stairs and/or being trodden on or injured by intoxicated youths and/or the general chaotic/disordered environment and/or because the Appellant (who appeared to be drunk) was not prioritising his safety, was plainly a reasonable one on indisputable evidence. There can be no realistic argument the judge was selective in her approach to the evidence and somehow considered only the “plums” and left the “duff”. Given the finding as to this belief the Judge then considered the necessity for arrest taking into account the additional central relevant factor of the reaction of the Appellant when challenged about the child's welfare (and bearing in mind that there was so suggestion that a PPO should have been used) . She was entitled to conclude that there were no “clear disputes as to fact” which should have been left for the jury to determine and that the Defendant had proved an entitlement to conclude that arrest was necessary.”

22. Specifically, with respect to the allegation of misfeasance, this was dealt with at paragraphs 60-62. Her Honour Judge Brown was not arguably wrong to conclude that “there is absolutely no proper evidential basis for allegations of dishonesty, malice, collusion, bad faith or similar to have been pleaded, advanced at trial or certainly to be left to the jury. . . . There is no proper evidential basis for the issue of targeted malice or the like to be left to the jury”.

Ground 6: second arrest for burglary and criminal damage

23. The Appellant seeks to challenge Her Honour Judge Brown's findings with respect to the second arrest for burglary and criminal damage on 24 November 2015. The Appellant acknowledges that the threshold for reasonable grounds to suspect her of burglary and criminal damage was met, but contends that the necessity test was not satisfied as the evidence was tenuous and insufficient.
24. This matter was dealt with by Her Honour Judge Brown at paragraph 70:

“I also find that, given the background of alleged harassment and threats by the second claimant, and possibly the first claimant, towards the alleged victim, the crime report not being particularly clear on that point, PC Godden reasonably concluded that the arrests were necessary when that fact was added to the need to prevent each of them putting their heads together to come up with a common story, and to the need to obtain evidence from each of them in interview. That is notwithstanding that some weeks passed since the alleged offences had been committed and that the last threat was recorded at the beginning of October or the end of September. PC Godden did not know, and there is no evidence that he did know, that Amy Little had moved out of her flat by the time of the arrest, on the evidence.”

25. It is not arguable that this evidence was tenuous or insufficient. It provided a sound basis for the learned judge’s conclusion that the arrest of the Appellant on 25 November 2015 was necessary.

Grounds 7-9: Detention on 4 January 2016

26. I consider that these grounds of challenge are arguable and have a realistic prospect of success. The Appellant was detained for 3½ hours in circumstances where it is arguable as to whether there was power to detain her. Further, in any event, it is arguable whether the detention for a period of 3½ hours was necessary and proportionate in the circumstances.

Conclusion

27. For the foregoing reasons, therefore, I grant permission for grounds 7-9, but refuse permission with respect to the other grounds.