



IN THE SUPREME COURT OF GIBRALTAR

Neutral Citation Number 2024/GSC/003

2021/ORD/087

BETWEEN:

DAVID MARK PILKINGTON

Claimant

-and-

THE COMMISSIONER OF POLICE

Defendant

Shane Danino (instructed by TSN) for the **Claimant**

Cecile Gomez (instructed by the **Office of Criminal Prosecutions and Litigation**)
for the **Defendant**

Judgment date: 19 January 2024

JUDGMENT

Introduction

1. This is a claim brought by Mr David Pilkington for damages for personal injury arising from an alleged battery by officers of the Royal Gibraltar Police (RGP). Mr Pilkington claims that the officers assaulted him outside his property during the early hours of 12 October 2018 prior to executing a search of his home.
2. It is not in dispute that officers of the RGP obtained a search warrant for the residence of Mr Pilkington, which the RGP says was based on information received that Mr Pilkington was storing drugs in his house on behalf of others. Following a risk-assessment prior to the execution of the warrant,

officers decided they would intercept Mr Pilkington outside his house. The reasons for this being that Mr Pilkington was deemed to have a propensity for violence and that it was not known if there were others in the premises with him. The Defendant adds that the officers also drew from their past experiences of dealing with Mr Pilkington and the possibility of easy access to weapons in his home. The officers that were involved were DS Marin, DC Golledge, DC Fendley, DC Gaul and DC Tester.

3. Mr Pilkington claims that the officers used disproportionate and unreasonable force when they intercepted him outside his residence. He claims he was taken to the ground; kicked and punched to his head, face, neck, torso and legs; had his hair pulled; verbally assaulted by way of insults and inappropriate remarks and put in fear generally. Mr Pilkington asserts that the officers failed to identify themselves and that he accordingly believed he was being kidnapped.

4. At paragraph 10.9 of his Particulars of Claim Mr Pilkington also alleges that his detention :

“was outside of the scope of, or alternatively, in excess of any lawful authority granted to ... [the officers] under the Search Warrant, any other statutory power including but not limited to Sections 523(1) & (2) of the Crimes Act 2011 and Sections 19, 20 & 42 of the Criminal Procedure and Evidence Act 2011, or the common law.”

In the circumstances he also alleges that he was unlawfully deprived of his liberty for 35 minutes as the detention was unlawful.

5. Mr Pilkington also claims aggravated and exemplary damages on the basis that the actions of the officers were arbitrary, oppressive, unlawful and unconstitutional.
6. For its part the Defendant avers that “containment” was to be effected pursuant to section 523 of the Crimes Act, and that the officers could therefore search and detain him for the purpose of a search to his person. The detention was further compliant with the Codes of Practice 2011.

7. The officers claim that they identified themselves to Mr Pilkington who then resisted by the stiffening of limbs and refusal to comply with instructions. He refused to be handcuffed, shouted, and reasonable force was therefore necessary to restrain and search him. The officers deny kicking, striking or insulting the defendant. Mr. Pilkington was taken to his residence for the officers to complete the Stop Search Detain Release (SSDR) process to avoid any embarrassment to him.
8. It is not in dispute that one concerned onlooker called the Police to report an incident.

Law

9. Sections 19 and 20 of the Criminal Procedure and Evidence Act 2011 (“CPEA”) make provision for the application, requirements and execution of search warrants. There is no need to set these out here or to discuss them. The same is true of section 42 CPEA, which although referred to by the Claimant in his Particulars of Claim, is of no relevance as it deals with arrest and Mr Pilkington was not under arrest at any time.
10. Part 21 of the Crimes Act deals with the misuse of drugs and related matters. Section 523 falls within that part and provides:

*“(2) If a ... police officer has **reasonable grounds to suspect that any person is in possession of a controlled drug or Scheduled Substance in contravention of this Part or of any regulations made under it, the officer may—***

(a) search that person, and detain him for the purpose of searching him;

(b) search any vehicle ... in which the officer suspects that the drug may be found, ...

(4) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that—

(a) any controlled drug or Scheduled Substance is, in contravention of this Part or of any regulations made under it, in the possession of a person on any premises; ...

*the magistrate may grant a warrant authorising any ... police officer ... to enter, if need be by force, the premises named in the warrant, and to search the premises **and any persons found in them** ...”*
(emphasis added)

Evidence

11. It was submitted in closing that sufficient weight should be afforded to the documentary evidence. That memory is fallible and contemporaneous documents are more reliable and indicative of the state of mind of those concerned.

12. I was referred to the judgment of Restano J in *Enterprise Insurance Company PLC (in liquidation) v. EIG Services Limited (in liquidation) and Andrew Flowers* 2023/GSC/008 when at paragraph 71 the judge referred to a summary of the approach to take with evidence in commercial cases given in the judgment of Smith J in *TMO Renewables (in liquidation) v Yeo* [2021] EWHC 2023 (Ch). That summary is lengthy and I do not propose to repeat it in this judgment, however, I do set out the conclusions drawn from said summary by the judge in expressing his approach to the evidence:

“72. ... I have kept in mind the importance of focusing on the contemporary documents as a means of getting at the truth, both as to what was happening and the motivation and the state of mind of those concerned. As the judge made clear, though, documents are not the whole story and all this needs to be viewed against the evidence holistically, including the impressions made by the witnesses in cross-examination.”

13. Although this is not a document heavy commercial case, I have nevertheless paid heed to this guidance in approaching the evidence before me.

14. Other than the witness evidence I will cover below, there have been numerous documents submitted by way of evidence. These include pre-action correspondence between the parties, the search warrant, a risk assessment or “investigation briefing checklist pre-planned operation”,

A&E notes, a SSDR form, a police call log, an entry from Inspector Enriles's day book and a report by him, video footage of the incident taken by a member of the public, redacted pocket book entries and reports by DS Marin, DC Golledge and DC Tester, reports by DC Fendley and DC Gaul, a sick note for Mr Pilkington, a complaint filed by Mr Pilkington with the Police Complaints Board, the Police Complaints Board's conclusion and witness statements by Mr Pilkington and Mr Traverso.

15. Ms Gomez submitted that DS Marin and DC Golledge were both unable to attend court within a reasonable period of time. DC Gaul is no longer an officer and the Defendant decided not to call him as he was abroad.

Mr Pilkington

16. Mr Pilkington provided a witness statement. He describes an attack by a group of men after leaving his house where he was forced to the ground, assaulted and insulted. He says he was kicked and punched to his head, face, neck, torso and legs and that his hair was pulled. He thought he was being kidnapped and shouted for help. It was when his hands were placed behind his back that he thought they might be officers and he stopped struggling but that even then the men had not yet identified themselves. This is different to the account given in his Particulars of Claim where he says he knew they were police officers at that stage.
17. Mr Pilkington appeared distressed when he watched the footage taken by an onlooker, and although he may have been overstating his reaction, it was clear that he found it distressing to some degree. The video only starts once Mr Pilkington is on the ground and I will comment further on it below.
18. Mr Pilkington was then taken into the living room of his house at which point the men identified themselves as police officers. He also claims he was arrested for possession of a controlled drug and informed that a search warrant was to be executed as the officers suspected he was in possession of a large volume of drugs. Mr Pilkington explains how nothing was found

in his house, and how his vehicle was also searched with the same outcome. In re-examination he acknowledged that the officers apologised and told him the information they had received was evidently incorrect.

19. Mr Pilkington claims that he suffered injuries and shock. He visited Accident & Emergency at St Bernard's Hospital where the nurse conducting the triage assessment recorded:

“patient in shock and unable to swallow well. obvious bruise and grazes noted all over his body. bruise on left side of his face, another red bruise and graze on his right side lower abdo. His main concern is his neck and jaw as hurts”.

20. The non-consultant hospital doctor recorded:

“soft abdomen on palpation, small bruise on the right groin, no neck pain”.

21. He was then examined by a GP four days later who declared him unfit to work for some 4 days with a sick note that read that Mr Pilkington was suffering from “Assault”.

22. Mr Pilkington also explained that he later learned that the matter had been recorded and circulated widely on social media along with his name. This, he says, caused him anxiety and distress. He suggests that very few of those viewers would know that nothing came from his detention by police.

23. Under cross-examination Mr Pilkington said that the police had no reason to fear him. He said he could not see their faces as not only was it dark, but they approached him from behind ‘like cowards’. He acknowledges that he tensed up and resisted. When it was put to him that he would have known within seconds that they were officers, he maintained that he only knew once inside the house. He added that the officers only calmed down once they saw they were being recorded by neighbours. When asked if the officers were making it harder for themselves by not identifying themselves,

Mr Pilkington maintained that if they had done so he would have stopped struggling.

24. He said he had paid for his past actions and he now wanted the officers to pay. He was adamant that the police officers had not identified themselves and that the possibility that they might be officers was far removed from his mind given the way that they were behaving. He maintained that he was stamped on his neck and face. It was put to Mr Pilkington that on the same day he had made a complaint to the Police Complaints Board yet made no mention that his neck was stepped on. Mr Pilkington was combative in cross-examination, asking Ms Gomez to inform DC Gaul that given his size “he hits like a girl”.

25. It was put to him that he had refused to see a Forensic Medical Examiner upon invitation by the RGP and had made no complaint to officers at the time of any injuries or pain. He claimed that there were photos, however, these have not been provided. As for the sick note from Dr Thoppil, he said he is a steel worker and works with his hands. In re-examination he said he went to the doctor as he was in pain, battered and bruised, nervous and in shock.

26. In terms of embarrassment he claims he was called “bitch”. It was put to him that the least he needed to worry about was embarrassment. He had extensive previous and he had no reputation to uphold, but he maintained he is a good neighbour and that this was therefore important to him. He added that if he were not embarrassed he would have left the matter.

Liam Traverso

27. Mr Traverso gave evidence on behalf of Mr Pilkington. He was awoken by screaming and shouting for help. On looking outside his window he saw Mr Pilkington on the floor surrounded by four men dressed in black, who did not appear to be police officers, hitting him. He claims they then dragged Mr Pilkington into the block.

28. In cross-examination he claimed that they used to be neighbours until he moved away. He described being acquaintances who did not socialise together. Although there was a familial connection through marriage, they did not really know each other. He says he had offered to provide a statement as what had happened was a big deal and he thought Mr Pilkington was going to get kidnapped.
29. He said other neighbours were screaming to call the police as Mr Pilkington was being beaten. That it was dark so he could not say if Mr Pilkington was facing up or down but could hear his distinctive voice and did not hear the men identifying as police officers or telling him to stop resisting. He says he saw Mr Pilkington being punched, that it all happened very quickly and he had only just woken up. It was put to him that to say that it appeared Mr Pilkington was being kidnapped was rather specific, but he said Gibraltar is not the same place it used to be. He saw four men dressed in black, coming out of a car and then mount on top of someone. That he did not think it was the police given how violently and aggressively they were dealing with Mr Pilkington. He also emphasised that Mr Pilkington did not walk into the block of his own accord.
30. It was put to Mr Traverso that he was relaying a version of events which had clearly been discussed with him to which he replied that he did not know what Mr Pilkington's statement said as he had only spoken to Mr Pilkington's mother. However, he then admitted to speaking to Mr Pilkington but that the kidnapping was not something that had been put into his mouth.

Colin Tester

31. Police Constable Colin Tester, who was a Detective Constable at the time, was the first witness called by the Defendant. He explained that the drugs squad sergeant conducts an assessment prior to operations and if classified as high risk, as was the case with Mr Pilkington, they would not knock or force the door open when executing a search warrant. A decision was taken to approach Mr Pilkington outside the property with the purpose of informing him that they were executing a search warrant at his premises.

They had arranged a containment by strategically placing themselves so that the subject would have no escape route.

32. PC Tester says they certainly shouted “police” as this is standard operating procedure, especially in the drugs squad as they are non-uniformed, and that they would have also said that they were conducting a search warrant. He describes how Mr Pilkington immediately tensed up as soon as they approached and identified themselves so they accordingly escalated due to their perception of threat. The incident intensified quickly as Mr Pilkington stiffened his limbs and would not allow them to control him. They did not want it to escalate further and applied no more force than was necessary.
33. After a couple of seconds they decided to take Mr Pilkington to the ground. There was an officer on every limb so it did not take much force to restrain him. Mr Pilkington kept shouting ‘help’ in Spanish and was told to stop resisting. He also states not to have insulted Mr Pilkington and neither had any of the other officers. They applied handcuffs and did not need to employ the use of batons or captor spray. As Mr Pilkington then complied the decision was taken not to arrest him. Mr Pilkington was quickly stood up and the sergeant conversed with Mr Pilkington at which point Mr Pilkington seemed to realise that they were police officers.
34. The officer denies Mr Pilkington was kicked, punched, or that a foot was placed on his neck, by either him or any of the other officers. He had no concerns about their behaviour and at no stage did he consider Mr Pilkington was being hurt or in pain. When they walked into Mr Pilkington’s home they built some rapport with him and handcuffs were removed. Mr Pilkington’s person was searched by another officer and PC Tester did not observe choking by Mr Pilkington or any apparent injuries. He would not have said that Mr Pilkington was shaken or in shock but instead that he appeared calm. As nothing was found in the premises the sergeant decided that Mr Pilkington would not be arrested for resisting earlier and it all ended on good terms.

35. In PC Tester's view they were operating under the powers of section 523 and they were exercising lawful authority. He explained that their aim was to stop and detain Mr Pilkington to conduct a search, but that there were other powers available such as Code of Practice A which allows them to stop and search individuals if they have reasonable suspicion.
36. During cross-examination PC Tester stated that the reason for the detention was the possession of controlled drugs and that if Mr Pilkington had drugs in his premises he could also have had drugs on his person. However, when put to him that when Mr Pilkington was intercepted it was solely with a view to search his home, and not his person, PC Tester replied in the affirmative. As for Code A, it was put to the officer that the required suspicion was that Mr Pilkington had drugs on his person. He repeated that if the information was that there were large amounts of drugs in the premises, that Mr Pilkington could also have drugs on his person. However, PC Tester, when pressed, accepted that there was no suspicion that Mr. Pilkington was carrying anything on his person and that they intercepted with the intention of searching the premises.
37. PC Tester was also referred to a stop and search form he had completed. It was put to him that if a search on Mr Pilkington was made for the purposes of drugs on his person, that the outcome would have been recorded on it. PC Tester replied that this may have been an oversight but that Mr Pilkington would have been searched inside the house.
38. PC Tester also confirmed that although in civilian clothing, they would have had police markings on their backs. One of his colleagues might have presented his warrant card as he was carrying it around his neck as is customary for one officer to do. Had Mr Pilkington challenged their identity they would have all shown their warrant cards. He also confirmed that Mr Pilkington's version that he thought he was being kidnapped was believable but not because they had not identified themselves as alleged by Mr Pilkington. He later resiled from this claiming that the assessment as believable was not one he made.

39. When asked if they tackled Mr Pilkington before he presented resistance, this was denied. He again denied that Mr Pilkington was kicked or stepped on his neck by anyone and added that he would never do this as it is inhumane. No one kicked or punched Mr Pilkington to the torso or legs or pulled his hair. He also denied that swear words were used, and upon reviewing the footage he pointed out that one of the other officers said “quedate quieto coño” which means keep still with the use of an added profanity in the Spanish language, but reaffirmed that no insulting words had been directed at Mr Pilkington.
40. As to the call to police by an onlooker, he suggested that a non-officer might describe it as a fight as opposed to officers struggling with a detainee, but that they did shout ‘police’ loudly which is probably why the caller woke up.

Daniel Fendley

41. DC Fendley explained how he might have spoken to Mr Pilkington professionally in the past to the extent that he believed Mr Pilkington would have recognised him. As per the morning briefing that day, the officers were going to detain Mr Pilkington pursuant to the provisions of ‘section 523’ as he was in possession of drugs with intent to supply. He was characterised as high risk due to his violent tendencies in conjunction with his previous convictions. Although they could enter by force if required it was decided they would detain and control Mr Pilkington upon exit from the residence for the safety of the officers, the public and Mr Pilkington himself.
42. This is something they would normally do, especially when dealing with large quantities of drugs. They would position themselves maintaining direct observation and once the subject is in view they would contain them and execute the search warrant. DC Fendley says he approached Mr Pilkington from the rear, said ‘police, stop where you are’ and pointed out his warrant card given that they were not in uniform although they were wearing attire which suggested they were police. He confirms that Mr

Pilkington was initially in shock and then began to make evasive manoeuvres by placing his arms close to his body and failing to show them. As Mr Pilkington seemed irate, he repeated the words 'police'.

43. Mr Pilkington was taken to the floor because of the struggle. This was proportionate and reasonable, and it was a short containment. DC Fendley confirmed that he had not punched, kicked or placed his foot on Mr Pilkington's neck nor had any of the other officers. Similarly, no one had insulted him or called him a 'bitch'. He was told by all the officers to release his hands and it then became apparent to Mr Pilkington that he was not being kidnapped as he had thought. Once DC Fendley looked Mr Pilkington in the face he calmed down dramatically and he was told they had a search warrant.

44. Mr Pilkington might have been in slight shock as they arrived at the residence but he was then quickly conversing with the sergeant. Mr Pilkington was remorseful for his actions saying he thought he was being kidnapped. He could sympathise with the shock factor of interacting with undercover officers but their actions had been proportional and it was very clear that they were officers and not kidnappers. The officers were not wearing balaclavas, they had their warrant cards, they would have had police equipment to their sides and back including radios, and the sergeant would have been wearing markings of rank. Mr Pilkington's belief that he was being kidnapped was subjective but did not make sense given the way the officers approached and dealt with him. It would have been clear to Mr Pilkington that they were police officers from the very outset. DC Fendley did not see any injuries and neither did Mr Pilkington complain that he had any.

45. In cross-examination, the officer confirmed that the purpose of detaining Mr Pilkington was to search his premises, and not him personally. That he was only searched once in the residence, prior to taking off the handcuffs. When asked if they had lawful authority to detain Mr Pilkington, DC Fendley replied that the warrant says that a subject can be detained for the purposes of performing a search whether being compliant or not. He had

informed Mr Pilkington outside of the search, which was the main purpose of the intervention.

46. When shown the footage, and in answer to questions, the officer explained that the video did not capture them saying they were police as this was prior to the start of the footage. That Mr Pilkington had said help to him in English, which is when he would have said police. When asked whether it was reasonable for Mr Pilkington not to have seen the warrant card around his neck, the officer conceded that this was a possibility but that it was not their only identifier as officers.
47. As to the recorded plausibility of Mr Pilkington's belief that he was being kidnapped, the officer stated that he did not agree. The decision not to arrest was for the sergeant, but due to Mr Pilkington's fluctuating demeanour from resistant to completely compliant, the explanation was one the sergeant must have taken into account in deciding not to arrest. That Mr Pilkington's behaviour changed outside when he became compliant so he could be lifted and then once inside he was even more compliant.
48. As for the caller to the control room, he said they would not have necessarily known what was happening as they were not within earshot. It was also dark and Mr Pilkington was shouting 'help'. That if Mr Pilkington had been thrown to the ground he would have had serious injuries.
49. As for the search on his person, the officer confirmed that this should have been recorded on the SSDR form. When taken to the form and shown that the search was not described in the narrative, the officer pointed out that on the top of the page reason why the form was opened was to search "person & vehicle", that the narrative was simply additional information.

Submissions & Analysis

50. There are two main questions to be determined:
- i. was the detention of Mr Pilkington outside his premises lawful?, and
 - ii. was he violently beaten or was the force used reasonable?

Lawful Authority

51. Mr Danino submits that there was no lawful interception of Mr Pilkington by the officers of the RGP. Mr Pilkington's subsequent detention for the purpose of executing the search warrant in his house was therefore also unlawful. Section 523(2)(a) of the Crimes Act is very narrow and there was no detention or search made by the officers within its ambit. The officers' strategy was predicated on a fear that Mr Pilkington would be violent and could self-arm. At no stage had it been suggested that the detention took place because Mr Pilkington was suspected to be in possession of controlled drugs on his person at the time as would be required by s. 523(2)(a). The officers did not hold such a suspicion and no search of Mr Pilkington's person took place on that basis. In essence the detention was not, therefore, a lawful exercise but was a strategy without lawful authority. That even though the SDDR form was ticked as suggesting it was also for the purposes of a search to Mr Pilkington's person, such a search was not referred to in the additional information section of that form nor in any of the reports submitted by the officers.

52. Further, section 523(4), which is the provision upon which the search warrant was obtained, does not allow pre-emptive interception. *Kenlin v Gardiner* [1967] 2 Q.B. 510, which deals with detention prior to arrest, is informative as to the effect of the detention if not effected pursuant to section 523(2)(a). LJ Winn said at 519:

"What was done was not done as an integral step in the process of arresting, but it was done to secure an opportunity, by detaining the boys from escape"

Following from that:

"I regret to say that I think there was a technical assault by the police officer".

If the officers did not have the authority to detain Mr Pilkington outside the property this would amount to a technical assault regardless of any findings on the allegations of beating. Lastly, false imprisonment follows if the detention was unlawful.

53. Ms Gomez submitted that it was obvious from the documentary evidence that a search of the person was always envisaged, that furthermore Part 2 of the CPEA provides powers of stop and search and that the police were empowered to detain Mr Pilkington pursuant to the Codes of Practice.
54. Dealing with Ms Gomez's submissions first, although section 5(2) CPEA provides the power to stop and search, it is qualified by section 5(3) which requires reasonable grounds for suspecting that the officer will find stolen or prohibited articles. I do not, therefore, deem the detention to have been in pursuance of a search under section 5(2) CPEA. Not only was there no evidence that this is what happened, but it would in any event fail as there is no evidence that the officers had ever set their minds to any suspicion that Mr Pilkington was in possession of any of the required items. Further, there is no evidence that they would have had reasonable grounds for suspecting this.
55. As for the Codes of Practice, reference was made to Code A2.8, which commences, "*An officer who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search.*" Once again the element of reasonable grounds to suspect is required, and as Mr Danino pointed out, the Codes of Practice need to be read into the law. The Code cannot provide a standalone right to exercise a power of detention. As set out under the 'General' section of Code A, "*the Code governs the exercise by police officers of statutory powers to search a person*". The Code is supplemental to the exercise by officers of statutory powers, and not in addition to those powers.
56. It is apparent to me that the officers had not turned their attention to the legal mechanics of the operation and had detained Mr Pilkington outside the property on the assumption that this was permissible when executing a search warrant as this had been done in the past. In my judgment the requirements of s.523(2)(a), and indeed any of the other stop and search provisions, are only satisfied if the officers actually considered whether there were reasonable grounds to suspect that Mr Pilkington was in

possession of a relevant offending item at the time and on his person. Only then could they have detained Mr Pilkington for the purposes of a search and moved him to his house.

57. It may be that in the officers' minds a search of Mr Pilkington was always envisaged. However, in my judgment this was intended as an extension of the search warrant, and therefore pursuant to the powers contained in s. 523(4) Crimes Act. This allows for a search to any person found in the premises, however, it does not extend to, in my judgment, the detention of a person pre-emptively outside the relevant premises, and their subsequent forcible escort into the premises.

58. Both PC Tester and DC Fendley confirm that the detention was for the purpose of the search in the property. That the SSDR form fails to mention a search to Mr Pilkington's body supports the contention that Mr Pilkington was not detained for the purpose of a search on his body pursuant to s.523(2)(a). However, even if the SSDR form had detailed a search to the body, it would have been conducted whilst Mr Pilkington was unlawfully detained. The intention to search him at that point could not cure the unlawful pre-emptive detention under purported pursuance of s.523(4).

59. For all these reasons I am of the view that there was no lawful basis to detain Mr Pilkington in the manner that he was.

Reasonableness of Force

60. Having concluded that the detention was unlawful, I nevertheless proceed to make determinations as to the extent of the assault as this will be relevant to the question of damages. I am of the view that Mr Pilkington has exaggerated the incident and his injuries somewhat.

61. I do not consider that Mr Pilkington was assaulted by the officers in the manner he describes. If the officers were intent on imparting the type of gratuitous violence that Mr Pilkington describes, they would have done so once he was behind closed doors, and not in the public eye. Under cross-examination Mr Pilkington conceded that he calmed down as soon as the

officers identified themselves. In my view, this is another acknowledgment that the struggle was reasonable. He even alluded to the claim being about embarrassment above anything else, which also adds doubt to the claims of violence.

62. If Mr Pilkington had been assaulted as he suggests, there would be no logical reasons for him to have calmed down as everyone agrees he did. He would presumably have continued to struggle if he was being beaten, regardless of whether the aggressors were police officers or not. Furthermore, it is difficult to envisage the officers uncuffing someone they reasonably assessed to have a predisposition for violence, after having needlessly beaten him minutes earlier. I have also considered that the officers are all consistent on this, and that DCs Fendley and Tester gave credible live evidence on the matter.

63. I also have no reason to believe that the officers did not shout ‘police’ initially, but given the evident shock to Mr Pilkington, he may have not initially registered that they were officers. In the video one can hear Mr Pilkington ask the officers “what’s wrong?” whilst on the ground, and someone is heard saying “obstructing” or “obstruction”. Mr Pilkington then keeps shouting and asking for help. If he did not know before, he would have at least suspected by then that the men were police officers. The Claimant was clearly afraid, and stops physically resisting once he is cuffed and raised to his feet. By this time, and by his own account in his Particulars of Claim, he says he knew they are officers, but still pleaded for help. The video also fails to show any kicks and punches as described by Mr Pilkington. Although the quality of the footage is not excellent, it can be clearly perceived that the officers were doing only that which was necessary to detain Mr Pilkington. There are also no insults being hurled. As was put to Mr Pilkington in cross-examination, if he had been assaulted in that manner, his injuries would have been extensive.

64. I do believe that Mr Pilkington may have suffered from bruises and grazes from the initial scuffle with police whilst on the floor. However, I do not consider, on balance, that he did have problems swallowing as he describes.

There is no medical evidence to suggest this. All I have seen is a contemporaneous note from a triage nurse recording what Mr Pilkington said. The Doctor, who then assessed him, clearly states 'no neck pain' and makes no mention of problems swallowing. There is no further evidence provided, and Mr Pilkington failed to visit an FME when invited to. Mr Pilkington also claims that he had caused photographs to be taken of his injuries, yet he did not present these in evidence.

65. The call to the police describing a fight is also not informative without evidence from the caller as to what they saw and perceived. It is not surprising that someone would immediately describe what they saw as a fight without further analysis or appreciation of what was occurring. It is not surprising that an onlooker would have called the police. Not because Mr Pilkington was being beaten, but because they saw a commotion and heard cries for help.

66. Mr Traverso's account was not consistent with that part of the incident that is captured in the footage. He was also inconsistent within his own evidence saying he was awoken by shouting but also that he saw four men get out of a parked car and approach Mr Pilkington. Only one can be true. I do not, therefore, consider his evidence to be reliable. It is also apparent to me that he had discussed Mr Pilkington's account as he raised the issue of kidnapping without good explanation.

67. In terms of embarrassment, I have no doubt that Mr Pilkington was embarrassed. He was undoubtedly scared when he was intercepted and the video portrayed him in a position of weakness, which he might not be accustomed to. The embarrassment, in my judgment, stems from that as opposed to his neighbours witnessing his detention. Further, he is understandably aggrieved when clearly the police's information about him storing drugs was incorrect.

68. For all these reasons I am not satisfied, on balance, that Mr Pilkington was insulted, punched, kicked or had his hair pulled as he alleges. To this I add

that the amount of force used would have been reasonable had Mr Pilkington been lawfully detained for the purposes of a search.

Damages

69. The question of quantum was left until liability was decided. In light of the above, the matter will now be listed for a short CMC to lead to a further hearing on damages for the technical assault and the false imprisonment. This will include consideration of aggravated and exemplary damages as claimed in the Particulars of Claim and Provisional Schedule of Loss, and of costs.

Dated this 19th day of January 2024

KARL TONNA

Registrar