Case No: E79YJ801

IN THE COUNTY COURT
AT LEEDS

Leeds Combined Court Centre
1 Oxford Row
Leeds
LS1 3BG

Date: 28 June 2021

Before:

HER HONOUR JUDGE BELCHER

- -

Between:

WAYNE LEIGHTON

Claimant

- and -

CHIEF CONSTABLE OF NORTH YORKSHIRE POLICE

Defendant

- -

- -

The **Claimant acted In Person**
MR BERRY for the **Defendant**

- -

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HHJ BELCHER:

1. This is an appeal from the decision of Deputy District Judge Buxton given on 5 April 2019 when he dismissed the Claimant's application to strike out the Defence and in particular certain parts of the Defence. I gave permission for this appeal on Grounds 1 and 2 only in an order dated 2 October of 2019 at which time I reserved the matter to myself. I did so because in the context of this appeal there has been disclosure of a Part 36 offer and counter offer and information which should not disclosed to a trial judge. I was anxious to prevent a situation where this appeal came back in front of another judge and, therefore, another judge was potentially debarred from hearing any trial in this matter. It is regrettable that we are now over two years after Judge Buxton's decision, but obviously that is largely as a result of the impact of the pandemic. It was, as I have said, October 2019 when I gave permission and, whilst one might have hoped it would have got on before the end of March 2020, plainly it did not. I sit in several jurisdictions and that may be part of the reason.

2. The proceedings arise out of Claims by Mr Leighton against North Yorkshire Police in relation to alleged intimidation, alleged instances of malicious prosecution, and in relation to the matters in front of me today, two alleged incidents of unlawful detention, the first on 11 October 2014 when he was detained by PC Gatecliffe (Incident 2 in the pleadings), and the second on 29 October 2014 when he was detained by PC Marshall (Incident 3 in the pleadings). On both occasions he was driving his private hire vehicle and was required by the officers to stop. There is no dispute the officers had the power to stop Mr Leighton section 163 Road Traffic Act 1988.

3. Mr Leighton's position is that he accepts the police officers were entitled to require him to stop under that section, and that they were entitled under sections 164 and 165 to get him to confirm his identity, produce insurance documents and matters of that sort, all of which he says he did. His case is that that effectively brought section 163 powers to an end and that, if the officers wished to keep him there after that, they had to do so under some other power.

4. In that regard he relies on the authority of *Lodwick v Sanders*. That is a decision of the Divisional Court and is reported at [1985] WLR at page 382, the Divisional Court comprising Watkins LJ and Webster J. The facts in that case were that a lorry was required to stop by police under section 159 Road Traffic Act 1972, which is the precursor to section 163 of the 1988 Act, the section with which I am concerned. The officer required the driver to stop and the driver stopped. The headnote reads that the driver was under a duty to keep his vehicle at a standstill for a reasonable period to enable the constable to complete any lawful enquiries under the Act, that is the Road Traffic Act.

5. In *Lodwick v Sanders* the officer stopping or requiring the lorry to stop suspected the vehicle might be stolen or had been stolen by the driver or that, in the alternative he was handling stolen goods, in other words driving a vehicle which he knew or ought to have known or had reasonable grounds to suspect had been stolen.

6. Four questions were put by the justices to the Divisional Court. The second and third questions were described by both judges as not arising on the facts. The first question was: Is the driver of a motor vehicle who stops it pursuant to a requirement made by a constable acting under the Road Traffic Act obliged under the section to cause the vehicle to remain at rest for a reasonable period to enable the constable to complete any lawful enquiries under the Road Traffic Act. Both Judges answered this "Yes". The fourth question was: Is a constable who stopped a motor vehicle pursuant to a requirement made under the Road Traffic Act acting in the execution of his duty in preventing for a reasonable period the movement of such a vehicle if he reasonably believes the vehicle may be stolen and wishes to make further enquiries of the driver and/or further independent investigations to establish the true ownership of the vehicle and the then driver's right to possession of the same? The court also answered that question in the affirmative, and that is both Watkins LJ, and Webster J. Mr Leighton drew to my attention that Webster J made the suggestion that there is not any power of detention under section 163, but rather a power such that the officer can require a vehicle to stop. There is a duty on the driver to bring the vehicle to a stop. If he does not then he commits an offence which may give rise to powers of arrest.

7. In relation to the Incident 2, the 11 October incident, the Respondent's cases is that the arrest by PC Gatecliffe was in circumstances where Mr Leighton had breached temporary traffic restrictions put in place for the York Races. For the first time today Mr Leighton has suggested that he effectively had an exemption or was not bound by that because he had delivered a passenger on the road in question and that the only sensible and safe way to exit the road was through the barrier in question. The officer on the evidence, such as it is, was sitting there and could clearly have been asked that by Mr Leighton. It appears that when the officer moved away from the barrier Mr Leighton took the opportunity to go past it. I mention that simply because that demonstrates an area in which the parties are unlikely to agree the exact details of what had happened. I will come back to that incident.

8. The other incident on 29 October (incident 3) happened towards the end of the evening, 10.45, 11 o'clock at night. PC Marshall, who is not a traffic officer, saw the Appellant's vehicle, was of the view that it was being driven too fast and dangerously and also when he followed him that he did not have a seatbelt on and that led to his being required to stop.

9. Within the Defence it is accepted that on 29 October PC Marshall detained Mr Leighton. It could not have been argued otherwise since he was taken into the back of a police van for the purpose of an interview/ Mr Leighton asserts the interview was administered unlawfully in any event because the steps for a voluntary interview were not taken, in particular he was not advised of his right to leave. Having said that, he then makes the point he could not have left the vehicle anyway because he was locked into the vehicle. The Defence in relation to 29 October is that there was a detention but the Respondents say it was lawful, and I will come to the pleading in a moment.

10. So far as 11 October is concerned, which is the York Races traffic restrictions, for today's purposes Mr Berry on behalf oft the Chief Constable is prepared to

concede that there was a detention although they reserve the right to argue otherwise at trial. The pleaded defence is there was no detention. In the alternative it is argued that the detention was not unlawful. There is no dispute that once there is a finding of a detention or admission of a detention then the burden of proof moves to the defendant as to what is reasonable to satisfy the court on the balance of probabilities that the detention was reasonable.

11. In relation to the Road Traffic Act grounds (section 163) and the principal argument which is put forward by Mr Leighton that there is no power of detention under section 163, Mr Berry submitted this. The Respondent's case is that following a stop under section 163 the officer had a common law power to detain the Appellant for the purpose of arresting him or reporting him for an offence, and he submits that both officers suspected the Appellant of committing an offence. In the case of the incident on 11 October, an offence in breach of temporary traffic restrictions, and in respect of the incident on 29 October, the seatbelt offence. Indeed, the officers did report Mr Leighton for each of those offences, albeit Mr Leighton says they should not have done so but should have issued fixed penalty notices.

12. Mr Berry then took me to *Lodwick v Sanders* and it is accepted that section 163 does not carry a power of detention for questioning. However, he submitted, after a stop there is a power to detain a vehicle in certain circumstances. The difficulty in relation to incident 3 is the Respondent's pleading which is an Amended Defence pursuant to the order of District Judge Mark dated November 2018 and in relation to incident 3, which is the PC Marshall incident on 29 October, paragraph 62 expressly pleads the defence that Mr Leighton was lawfully stopped and detained pursuant to section 163 Road Traffic Act 1988. Power of detention is not put forward on any other basis. It was put forward on a different basis but that is not in relation to this, and in response Mr Leighton makes the point, "Well, they can't rely on some common law power that they've never specified before" and that they specifically rely on section 163 as lawfully stopping and lawfully detaining. In his submissions to me Mr Berry accepted that section 163 does not carry a power of detention for getting answer to questions, but he says there is a power after the stop to detain a vehicle in certain circumstances. He submits that if, after the stop, the officer suspects other offences the officer can then detain for the purpose of dealing with him for those offences. That may be right but that is not the pleaded case. The pleaded case is he was lawfully stopped and detained pursuant to section 163 Road Traffic Act 1988. It seems to me that on the basis of the submissions before me Mr Berry and Mr Leighton are agreed that there is not a power to detain under section 163, but that is the very power relied on in the pleaded Defence.

13. Mr Leighton submits that the Deputy District Judge failed to engage with this argument and failed to consider, as he submits he should have done, whether that paragraph should be struck out which would effectively strike out the Defence to the unlawful arrest for that incident.

14. The Deputy District judge gave short reasons. He suggested that a number of these matters are for evidence and Mr Berry submits that the issues as to whether the officers genuinely suspected other offences, and whether they had detained Me Leighton for the purpose of dealing with those other offences are supremely

matters of fact. That is undoubtedly right. That runs into the difficulty that it is pleaded that he was stopped and detained pursuant to section 163 of the Road Traffic Act. It is pleaded at paragraph 59 that PC Marshall had reasonable grounds for suspecting the Claimant was guilty of a road traffic offence, but it is not suggested that gives him the power to stop or detain Mr Leighton. It is further pleaded that if he suspects that a person has been driving on a road and commits a traffic offence an officer may administer a breath test. That is undoubtedly right and obviously there would have to be detention for the purposes of administering a breath test. Those are not the points made here. What is submitted by Mr Berry is that both officers had detained Mr Leighton for the purposes of dealing with him for other offences. That is not the pleaded Defence. The pleaded Defence on Incident 3 is that Mr Leighton was lawfully stopped and detained pursuant to section 163 of the Road Traffic Act. It seems to me based on submissions that both Mr Berry and Mr Leighton put before me that that part of it simply cannot be sustained.

15. The way Mr Berry put it before me today was the question for trial is whether the officer had it in his mind – that is in each incident - to arrest or otherwise deal with the suspect as in reporting for an offence and that by analogy that would extend *Lodwick* to the circumstances. As I say, certainly in relation to incident 3 that is not how the matter is pleaded.

16. Just because issues of law may not be straight forward does not mean they are not capable of being resolved on a summary basis but this particular issue is not in dispute. It is not the Respondent's case that Mr Leighton was lawfully detained pursuant to section 163 of the Road Traffic Act 1988. Very properly, on the authorities Mr Berry accepts he was not.

17. It is submitted, and rightly so, that there is no evidence before me that the Deputy District judge engaged at all with section 163, it is not even mentioned in the short Judgment. I do not criticise him for that. This came before him in a busy list with little or no pre-reading time such as was available to me. The Judgment at Pragraph 11 states in essence that the discussions or conversations between the driver (in this case the Claimant) and police officers need to be considered, to be weighed in the balance, and then one can properly apply both PACE and the Criminal Law Act 1976 and the Road Traffic Act and it would be premature, or previous as he described it, to do so at that stage.

18. There are undoubtedly disputes of fact and, insofar as any issues of fact are relevant to the exercise of powers those plainly are matters that must go over to trial. Mr Berry very properly makes the point that much of what Mr Leighton said to me today is his opening statement and effectively giving evidence such as Mr Leighton saying, "I wasn't rude, I wasn't difficult, I did as I was asked, I only got a bit worked up once I'd moved my vehicle down the road and I was being asked questions in circumstances where I'd been cautioned, I was worried." That is directly contrary to the evidence given by the officers who say that he was aggressive or difficult. Mr Leighton does not accept that. I understand that, but the point is rightly made that those are supremely disputes of fact which should be resolved at trial. There is reference to the Road Traffic Act but in essence what the District judge decided was these are all issues of fact and they can properly be resolved only at trial.

19. I am not persuaded that the section 163 point is purely an issue of fact, particularly in circumstances where Mr Berry agrees that it does not give a power of detention. He relies on separate common law powers to determine for the purpose of arresting or reporting him for an offence, and he submitted that in circumstances of a section 163 stop if the officer suspects other offences then the officer can detain the person for the purpose of dealing with the other offences. That is not the pleaded case in relation to Incident 3, and in those circumstances it seems to me that paragraph 62, at least I think as far as it deals with section 163, must be struck out.

20. I will come back to the question of the interview in a moment.

21. In relation to the other incident, the incident with PC Gatecliffe (Incident 2), it is not accepted in the Defence that Mr Leighton was in fact detained. Mr Leighton makes some very clear submissions as to what was going on. He submits that he was detained, although of course, for the purpose of today, the issue is whether any detention was lawful.

22. In the Defence in relation to this incident it is pleaded that the Claimant was not confined, was not forced to stay in an area, and that taken at its highest, he was temporarily unable to drive his vehicle. It is pleaded specifically that PC Gatecliffe had reasonable grounds to suspect the Claimant was guilty of a road traffic offence and having been lawfully stopped the Claimant was under a duty to keep his vehicle at a standstill for a reasonable period to enable the constable to complete his lawful enquiries under the Road Traffic Act. It then says the Claimant was at all material times lawfully stopped pursuant to the Road Traffic Act, but it does go on at paragraph 38 "For the avoidance of doubt the Claimant was suspected of being guilty of the offence of failing to comply with the indication given by a traffic sign contrary to section 36". Therefore, it seems to me that the issue as described by Mr Berry is, in the circumstances of a section 163 stop, where a police constable suspects possible other offences, the extent of any detention for the purpose of dealing with him for that offence. That, he submits, is entirely a matter for factual determination at trial. It can be properly be decided only once the judge has determined what happened in Incident 2, including the extent to which Mr Leighton was stopped and, therefore, as Mr Berry put it, supremely a matter to be determined after resolution of the facts.

23. Mr Leighton submits that that is not right. He submits that what is clear from the *Lodwick* case is different because that is in relation to a theft. Mr Leighton also submits that in relation to the 11 October matter, given the concession for today's purposes that there was detention – and in my view that is a very sensible concession, albeit it is only limited to today – Mr Leighton makes the point, "Well, they then have to show it was necessary to detain him for some reason, for the purpose of enquiries, and so on" and he makes the point that nowhere is it pleaded that it was necessary to detain him for the purpose of their enquiries.

24. Mr Berry accepts that that is not pleaded. He submits that it was obviously considered necessary by the Defendant by reason of the fact that it is the Defendant's claim. He also submits that the Defendant will have the burden of proving that at trial if it is necessary, and then his fallback position is that before

allowing the appeal on that basis a less draconian option should be considered and that is that the Defence should be amended to include the words "was considered necessary" because that, he submits, is to be inferred.

25. Mr Leighton came back and said that should not be the position, that the Defence has been amended, he said, on several occasions – it appears to me to be one occasion – but nevertheless a significant and substantial amendment by counsel, and Mr Leighton submits the defence have had more than adequate opportunity to allege that it was necessary to detain him. He submitted that necessity should not be inferred and that they should not be allowed effectively simply to raise that at trial when he has not been put on notice that that is an issue that he would have to be prepared to deal with. He also makes the point that he was deprived, as he puts it, of his section 29 entitlement, that is in relation to the interview without being told beforehand that he was not under arrest and had the right to walk away. That, he submits, effectively puts him under arrest; and of course that relates to the other incident.

26. It seems to me that this is arguable for the purposes of trial, although I accept that it is not pleaded as necessary, but it is not in fact accepted for the purposes of trial that there was a detention. I am just looking at the detail of the pleading. What is said, Mr Leighton made much of the fact there was heavy traffic, that PC Gatecliffe was able to catch up with him on a bicycle, that he could not possibly have thought he was intending to drive off. What is pleaded is that Mr Leighton attempted to get away from the police officer and that PC Gatecliffe therefore pulled alongside the vehicle, opened the door and removed the key from the ignition. He then, on the Defence pleaded case, asked the Claimant to pull up further down the road so he could speak to him in safety. It is pleaded that Mr Leighton appeared affronted at the demand that was being made on him. The officer reminded him of his obligations under the Road Traffic Act. The Claimant stopped a short distance down the road. The officer obtained the details, informed him he would be reported for summons for failing to comply with a traffic sign and drove away. The way it is pleaded is to suggest the Claimant's details were not given until after this happened but I appreciate that Mr Leighton told me today that he showed him his badge and that, he said, covers everything such that the officer was not entitled to ask for further details.

27. It seems to me that there are factual issues here including whether there was a detention. What is pleaded at Paragraph 32 of the Defence is that having been lawfully stopped the Claimant was under a duty to keep os vehicle at a standstill for a reasonable period to enable the constable to pursue his lawful enquiries under the Road Traffic Act 1988, and that, it seems to me, includes offences.

28. This raises an interesting point. Mr Leighton has made the point this morning that it appears the officer, as pleaded, is permitted to make his lawful enquiries under the Road Traffic Act 1988. In that paragraph (26) it is pleaded that the offence of driving past a traffic sign is under section 36 of the Road Traffic Act 1988. Mr Leighton makes the point that it is not. He says, that that is an offence for a permanent sign and that an offence in respect of a temporary sign is under the Road Traffic Regulations. But those, again, are points that can be argued at trial. If the officer was trying to stop him and ask questions in relation to an offence, there may be issues as to the fact that, although he got the Act wrong,

nevertheless there was potentially an offence there and potentially a right to investigate that. As I have mentioned several times, this is not a traffic officer as is abundantly plain from what happened.

29. I have come to the conclusion that whilst in terms of reasoning it is very short, it is clear that the Deputy District judge took the view that all the issues between the parties on the legal issues raised depended on findings of fact and could not, therefore, be resolved at this point. I have allowed the appeal to the extent I do not agree with that in relation to Incident 3 given that the legal issue as pleaded is that this man was detained pursuant to section 163 and Mr Berry, very properly in the light of the authorities, accepted Mr Leighton was not detained under that section, and, indeed, could not be. He said he was detained for the investigation of other offences. That is not how the Respondent's case is pleaded.

(This Judgment has been approved by HHJ Belcher.)