Neutral Citation Number: [2024] EWCA Civ 1269

Case No: CA-2023-001615

**IN THE COURT OF APPEAL (CIVIL DIVISION)**
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**The Honourable Mrs Justice Hill DBE**
**QB-2020-4224**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

**Before:**

**THE LADY CHIEF JUSTICE OF ENGLAND AND WALES**
**(Baroness Carr of Walton-on-the-Hill)**
**LORD JUSTICE DINGEMANS**
and
**LORD JUSTICE WILLIAM DAVIS**

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**Between:**

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| **EDWIN AFRIYIE** | **Appellant** |
| **- and -** | |
| **COMMISSIONER OF POLICE FOR THE CITY OF LONDON** | **Respondent** |

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**Mr Richard Clayton KC and Mr David Hughes** (instructed by **Donoghue Solicitors**) for the **Appellant**
**Mr John Beggs KC and Mr Mark Ley-Morgan** (instructed by **Weightmans LLP**) for the **Respondent**

Hearing date: 8/10/2024

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 25th October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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## LORD JUSTICE WILLIAM DAVIS:

## Introduction

1. At around 5.30 a.m. on 7 April 2018 Edwin Afriyie ("the appellant") was driving his car through the City of London. On King William Street he was stopped by officers of the City of London Police. This was because he was suspected of driving at an excessive speed. In the event he was never charged with any offence relating to his driving. He was required to provide a sample of breath to measure his blood alcohol content.

2. In due course the appellant was arrested for failing to supply a sample of breath. Police officers attempted to handcuff him. They were unable to apply the handcuffs. There came a point at which the appellant was standing on the pavement with his arms folded. One of the police officers, a PC Pringle, had drawn out his taser. PC Pringle discharged the taser in the appellant's direction. The appellant fell back and struck his head against a window ledge of the building behind him.

3. The appellant brought proceedings against the Commissioner of Police for the City of London for damages for assault and battery and misfeasance in a public office. He suffered personal injury as a result of his fall backwards. He claimed inter alia that the use of a taser amounted to unreasonable force. After a hearing occupying five days, Mrs Justice Hill in a judgment dated 30 June 2023 ([2023] EWHC 1632 KB) dismissed the claim. In particular, she found that the use of a taser was lawful and objectively reasonable in all the circumstances. The issue in the appeal is whether the judge's conclusion was reasonably open to her on the evidence.

### The factual background

4. In April 2018 the appellant was aged 31. He was a social worker. He had worked closely with the police in that role, in particular in relation to a community project in Peckham. The car he was driving on the morning in question was owned by him. It was properly insured. These facts were confirmed by checks carried out by the police officers who had stopped him – PCs Worster, Rickman and Lacy. The appellant had handed over his driving licence and his car keys to the officers. He was asked to provide a sample of breath using a roadside breathalyser device. The device registered the appellant's first two attempts as "insufficient".

5. The events thereafter were captured on body worn video devices ("BWV") worn by PC Rickman and PC Worster. PC Rickman turned on his device at 5.46 a.m. PC Worster activated his device at 5.54 a.m. The devices created a video and sound record of what happened in King William Street. The judge heard oral evidence from the appellant, his friend William Cole who had travelled with him as a passenger in his car and PC Pringle. PC Worster was unable to attend due to illness. His evidence (which included a note of evidence he had given at a previous hearing) was admitted as hearsay. The evidence of the other police witnesses was adduced by way of their written statements as was the evidence of another friend of the appellant present at the scene. Whilst the oral evidence and the written statements were important, the best evidence of what the police officers and the appellant and his friend did and said was the footage retrieved from the officers' BWVs.

6. The judge at [11] to [34] of her judgment rehearsed in detail the events from the point at which PC Rickman turned on his BWV to the point at which the appellant fell to the ground having been tasered. It is unnecessary to repeat that exercise in full for the purposes of the appeal. I can summarise what happened by reference to the judge's findings and to the BWV footage which the court has reviewed with care.

7. At 5.46 a.m. the appellant was given a third opportunity to provide a sample of breath. The breathalyser device again registered the appellant's attempt to provide a sample as insufficient. One of the police officers noticed that the appellant was chewing gum. This was capable of interfering with the result of a breathalyser test. The appellant was told to get rid of the gum which he did. To obtain an accurate sample it was necessary to wait 20 minutes before administering another test. During the time that the police and appellant were waiting the appellant initially sat in his car. He got out of the car when PC Rickman told him to do so. The officer believed that the appellant had put something in his mouth. The appellant denied this. In any event, the appellant remained outside his car from that point onward.

8. At 5.52 a.m. when he was standing on the pavement the appellant made a telephone call to his girlfriend. PC Rickman asked him who he was ringing. The appellant said "what does that matter?" to which the officer said that he was only asking a question. Once the call was over, the appellant asked what his being on the telephone had to do with anything. It was apparent that he was annoyed with PC Rickman. He referred to the officer asking stupid questions. He then opened the boot of his car and sat calmly on the ledge of the boot.

9. Over the course of the next few minutes the appellant engaged in apparently amiable small talk with PC Worster. They talked about the appellant's work with young people and his engagement with the police in that role. Before this conversation PC Worster had spoken on his police radio to PC Pringle. That officer was in a police van parked a little distance away. PC Worster told PC Pringle that they were waiting until another breathalyser test could be administered. Referring to the appellant, PC Worster said "….the chances are he might blow over….he's really aggy….he knows what's going to happen…."

10. At 6.02 a.m. PC Rickman and PC Worster administered another breathalyser test. As the appellant exhaled, PC Rickman said "harder" repeatedly followed by "it needs to be a lot harder, lot lot lot more harder". PC Rickman told the appellant to stop for a moment. The appellant was asked if he was asthmatic to which he said that he had breathing issues. The officer demonstrated how the appellant should breath into the device having taken a really deep breath. The breathalyser test was resumed. The appellant blew into the device. The device emitted three short beeps. P.C. Worster said "that's it, sounds like that's happened". The appellant stopped breathing into the device. When the police officers looked at the device, it had registered "insufficient sample".

11. By now it was 6.04 a.m. PC Worster said "….gonna get the cuffs on you now you're nicked mate…." PC Rickman told the appellant to put his hands behind his back. The appellant asked "are you joking me?" He said that he had blown into the device and that the officer had said "that was it". PC Worster told the appellant that he was under arrest and took hold of the appellant's arm. The appellant pulled his arm away. He repeatedly referred to the fact that the officer had said "that was it". At this time the

police van containing PC Pringle and a PC Murudker pulled up. Both got out and joined the other police officers at the scene.

12. PC Rickman told the appellant that he was under arrest and cautioned him. PC Murudker took hold of the appellant's arm. The appellant pulled away his arm saying "just get off me man". He continued to protest that he had been told "this is it". His tone was insistent and frustrated. PC Pringle then drew out his taser. He pointed it at the appellant. He activated the laser sight on the taser which caused a red dot to show on the appellant's body. One of the other police officers told the appellant that he had a taser aimed at him. The officer said "we don't want to do that".

13. PC Murudker and PC Worster each took hold of one of the appellant's arms. The appellant carried on with his protestations that a police officer had told him "that was it". He then turned to his friend, Mr Cole, who was standing close by and shouted "I'm not going to allow this". He pulled his arm away from PC Worster. PC Pringle shouted "do not struggle" more than once. The appellant pulled his other arm away from PC Murudker. He then was standing facing Mr Cole. He removed his wristwatch and threw it to Mr Cole. The appellant then talked to Mr Cole rather than any of the police officers who by now were in a circle around him. He said several times that a police officer had said "that was it". Mr Cole was aware that a police officer had taken out a taser. He said a few times to the appellant "don't get tasered". The appellant repeatedly was told to put his hands out. PC Pringle shouted "put your hands out, do as you are told". After around twenty seconds the appellant folded his arms. He continued to speak to his friend. He was in mid-sentence when PC Pringle discharged his taser. The appellant fell directly backwards. The window ledge on which he struck his head was close to the pavement. He fell onto the ledge from his full height.

14. Both Mr Cole and another friend of the appellant who had been in the car were clearly distressed by what had happened. The appellant remained on the ground. He was still saying that the police officer had said "that was it". He was handcuffed whilst on the ground. He was helped to his feet but went back to the floor on a number of occasions. There came a point when he was able to stand. He struggled and shouted such that he was put to the ground again by police officers. In due course he was taken to hospital.

15. As a result of being tasered and consequent upon his fall the appellant sustained a traumatic head injury classified as minor by a consultant neurologist. This injury caused severe headaches accompanied by nausea, blurred vision and light sensitivity. The headaches gradually reduced in severity over a period of two years before resolving. The appellant also suffered moderate post-traumatic stress disorder.

16. Because he had used a taser, PC Pringle was required to complete a Use of Force form which he did shortly after the incident. In a section entitled "Information/Intelligence" the officer gave a description of the appellant as follows: "Male of heavily muscular build, in a heightened emotional state. Being arrested. Making verbal threats. Male removed wristwatch having pushed police hands away from him and assumed a fighting stance. Repeatedly ignored commands to put hands out to be cuffed and to calm down…." Under the heading "Threat assessment" the officer wrote: "Significant physical threat posed due to subject's aggressive attitude, stance and general agitation."

17. The Authorised Police Practice ("APP") as published by the College of Policing was part of the evidence before the judge. The section relating to tasers (referred to as

conducted energy devices) was first published in 2013. The judge had the version as updated on 1 March 2022. The updated version made no material changes to the original version. The APP set out the possible effects of the use of a taser on an individual. It referred to the risk of head injury from an uncontrolled fall. In relation to use of a taser the APP stated:

18. "Taser should only be used as a proportionate response to an identified threat. It should not be used to simply gain compliance with instructions or procedures where compliance is not linked to such a threat or where a threat has been reduced to such an extent that Taser use would no longer be proportionate. The duration of the initial discharge and any subsequent discharge must be proportionate, lawful, accountable and absolutely necessary (PLAN)."

19. As the judge noted, under the terms of section 5(1)(b) of the Firearms Act 1968 a taser is a prohibited weapon.

## The trial

20. The appellant claimed damages for assault, battery and misfeasance in a public office. The claim was first tried in 2022 before a Deputy High Court Judge. Unfortunately, that judge fell ill after the hearing but before he was able to complete his judgment. So it was that the judge in 2023 had a note of the sworn evidence of PC Worster. The appellant's claim for assault and battery related to the decision to use handcuffs at the point of arrest, to the use of a taser and to the use of handcuffs after the appellant's fall to the ground. The judge concluded that it was objectively reasonable for PC Worster to have considered the use of handcuffs was necessary both before and after the use of the taser. There is no appeal against this conclusion which disposed of the claim for assault and battery insofar as it related to handcuffs. It is her finding in relation to the taser which is the focus of the appeal. I say nothing about the claim for misfeasance in a public office. It played no part in the appeal. No argument was addressed on it.

21. Having set out the facts, the judge considered the legal framework in relation to the claims for assault and battery. Counsel appearing for the Commissioner conceded that, in relation to the use of the taser, the Commissioner had to prove three matters: PC Pringle honestly believed that it was necessary to use force at the time he discharged the taser; PC Pringle's belief was objectively reasonable; the force he used, namely discharging the taser, was no more than was objectively reasonable in the circumstances. The judge proceeded on the basis that this concession accurately reflected the law.

22. The judge first considered "whether PC Pringle honestly believed it was necessary to taser" the appellant. She found that he did. The proposition that the officer honestly believed that it was necessary to use force (which was the way in which the parties agreed the first issue should be assessed) is not challenged by the appellant. The appellant accepts that the judge analysed the evidence and that an honest belief in the need to use force was a conclusion reasonably open to her given her findings of fact. In those circumstances, it is necessary only to set out the principal factors on which she relied in short form. They were as follows:

- The appellant's physical build;

- His heightened emotional state;
- The shout of "I'm not going to allow this" amounted to an implicit threat of resistance to arrest;
- The appellant throwing his watch to Mr Cole albeit that this may have been for an innocent purpose so far as the appellant was concerned;
- The appellant's stance which was capable of being seen as readying himself to attack or aggressively to resist arrest.

23. In relation to the last factor the judge noted what PC Pringle had said on the Use of Force form about the appellant's stance. She referred also to the officer's initial MG11 witness statement in which he said that the appellant had "his hands in front of his body, forearms perpendicular to the ground". The judge said that the relevant part of the form was "not entirely accurate". She described the form and the MG11 statement as "at best entirely unhelpful". However, she determined that, "seeing the phrase in its full context", it was "an unfortunate shorthand" intended to convey his belief that the appellant was readying himself to attack or aggressively to resist arrest. She gave weight to PC Pringle's evidence that it would have been foolish of him to lie since he knew that the incident was being captured on BWV cameras.

24. In respect of the officer's honest belief, the judge also considered PC Pringle's oral evidence that he thought that PC Worster was likely to step forward in order to try to handcuff the appellant and that, when he did so, the appellant would assault him. This was not something he had stated prior to giving evidence at the first trial. She said that PC Pringle's evidence was no more than "a more developed analysis" of the position. The judge accepted that PC Worster did not step forward. Rather, he turned towards Mr Cole. It also was the case that PC Worster did not say in his evidence that he had been about to move towards the appellant. However, the judge concluded that what PC Worster did may not have been apparent to PC Pringle. Taking all those matters into account, the judge was satisfied that PC Pringle honestly believed that he needed to use force, namely the taser.

25. Although the judge sought to separate the issues of the reasonableness of PC Pringle's belief and the objective reasonableness of the use of a taser, her analysis elided the two issues. In relation to the issue of whether PC Pringle's belief was objectively reasonable, the judge relied on the matters she had considered when assessing the officer's honest belief. She referred to the appellant's final movement before he was tasered, namely folding his arms. PC Pringle's oral evidence was that he interpreted this as a gesture that said "come and get me". The judge found that this interpretation was objectively reasonable by reference to the factors as set out above in short form. She noted that the appellant folded his arms after he had been requested more than once to put his arms out. The taser was used 3 seconds after the folding of the arms. The judge said this illustrated "the fast moving nature of this incident and his (PC Pringle's) logical response to the (appellant's) actions".

26. The judge accepted that there was no evidence that PC Worster had made any move forward to arrest the appellant. Indeed, when the taser was used, that officer had turned his body towards the appellant's friend. The judge said that this may not have been

apparent to PC Pringle. She had to make allowance for the fact that the officer had to make a decision in real time when under pressure.

27. The judge considered the APP guidance as set out above in assessing whether the force used by PC Pringle was objectively reasonable. She said that "in one sense, the taser in this case was used as a compliance tool". She referred to the fact that PC Pringle had said that the appellant "got tasered for not doing what he was told" and PC Rickman said it was because he "refused to comply". The judge found that the "compliance tool" analysis was too simplistic. First, she said that the compliance in question was compliance with a lawful request that he be handcuffed. Statutory powers to use reasonable force had been triggered. Second, the issue of compliance was inextricably linked to the threat posed by the appellant, namely the threat of aggressive resistance to lawful arrest. The judge relied on PC Pringle's evidence that his reference to a "compliance tool" was a clumsy way of explaining that the appellant posed a threat.

28. The judge acknowledged that, after the use of the taser, PC Pringle had said "why don't you just shut your mouth?" to one of the appellant's friends who was clearly upset at what had just happened to the appellant. PC Pringle had gone on to suggest that the friend would be "lifted" if he continued remonstrating and, at one point, appeared to threaten to taser the friend. The judge said that these matters reflected the continued heat of the situation. They did not imply that PC Pringle was "trigger happy" in relation to his use of the taser. The fact that PC Pringle had the taser out and ready for use almost as soon as he had arrived on the scene and had used it barely two minutes after his arrival did not affect the reasonableness of his actions. The judge said that these matters simply showed "how fast-moving the situation was and how PC Pringle was alive to the threatening nature of it". The judge concluded that PC Pringle's honest belief (as she had found it to be) was reasonably held. The fact that it may have been mistaken did not alter that conclusion.

29. The final issue considered by the judge was "whether the use of the taser was more than was objectively reasonable in the circumstances". In respect of that issue, the judge simply discussed two options other than using a taser which had been considered during the trial. First, could the appellant have been incapacitated with PAVA spray from the canister being held by PC Rickman? Second, could the police officers have exercised patience? Could they have "given space" to the appellant?

30. Use of PAVA spray would have been less dangerous to the appellant than discharging the taser. It would not have created any risk of an uncontrolled fall. The judge concluded that it was not a feasible option in the circumstances. She referred to "the very rapid pace of this highly charged incident" which meant that it may have taken too long to use PAVA spray. The judge also considered that use of PAVA spray might have created a risk of injury had the appellant run into the road having been sprayed in the face and that the officers would still have had to try to take physical control of the appellant with a concomitant risk of injury.

31. As to the police officers adopting a strategy of giving time to the appellant to calm down, the judge rejected the notion that the appellant being under arrest removed that option. She also dismissed the proposition that the police were under pressure of time since almost an hour had passed since the appellant's arrest. Of itself, that could not justify the use of a taser. However, her conclusion was that, "once the (appellant) had folded his arms, PC Pringle had to make a split-second decision as to whether to try and

engage him further in negotiation or whether to discharge the taser". Given what had preceded the appellant folding his arms, PC Pringle was objectively justified in deciding that further negotiation with the claimant would be futile.

32. For those reasons the judge found that the Commissioner had proved each of the three matters required to demonstrate that no police officer had committed an unlawful assault and battery.

## The legal framework

33. The Commissioner relied on section 3 of the Criminal Law Act 1967 to justify the force used by PC Pringle. That provision justified the use of "such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders…." Reliance was also placed on the power afforded by section 117 of the Police and Criminal Evidence Act 1984 to use "reasonable force if necessary" in exercising the power of arrest. This power adds nothing to section 3 of the 1967 Act. Further, it was said that PC Pringle was entitled to use reasonable force in defence of his fellow officers.

34. Were criminal liability for assault and battery to be the issue in the context which applied in this case, the reasonableness of the accused's actions would involve the application of section 76 of the Criminal Justice and Immigration Act 2008. Whether the degree of force used by a person was reasonable in the circumstances is to be decided by reference to the circumstances as the person believed them to be. If the person honestly holds their belief, they are entitled to rely on it in the assessment of reasonableness whether or not it was mistaken, or (if it was mistaken) the mistake was a reasonable one to have made. However, the degree of force used by the person is not to be regarded as having been reasonable in the circumstances as the defendant believed them to be if it was disproportionate in those circumstances. It follows that in the criminal law there are both subjective and objective considerations. The issue of proportionality involves an objective assessment of the amount of force used.

35. This is a civil claim for assault and battery. Unlike a criminal case where the defendant has no burden of proof, the burden is on a defendant to a civil claim where the issue is self-defence or defence of another and/or the use of the power in section 3 of the 1967 Act. In criminal law an honest but mistaken belief, even if it might be considered unreasonable, may be sufficient to found the defence. In a civil claim, the defendant must show that he honestly and reasonably believed that it was necessary to defend himself or defend another, in addition to showing that the force used was reasonable in all the circumstances: see *Ashley v Chief Constable of Sussex Police* [2008] UKHL 25, [2008] AC 962; *Chief Constable of Merseyside v McCarthy* [2016] EWCA Crim 1257 at [30]. The test identified by the judge in this case properly reflected *Ashley* and *McCarthy.* The requirement that the defendant must prove that the force used was reasonable in all the circumstances involves an assessment of the proportionality of the force used. The issue is not just whether the use of force was reasonable in the circumstances as the defendant believe them to be. The question is whether the degree and nature of the force used was reasonable. Contrary to a submission made in writing on behalf of the appellant, an assessment of the reasonableness of the force used must involve a consideration of how proportionate that response was to the overall circumstances facing the defendant.

36. Where a judge's conclusion is based on findings of fact, an appellant can only succeed in overturning that conclusion if the judge's findings of fact were plainly wrong as explained in *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600 at [62]:

> *"Given that the Extra Division correctly identified that an appellate court can interfere where it is satisfied that the trial judge has gone "plainly wrong," and considered that that criterion was met in the present case, there may be some value in considering the meaning of that phrase. There is a risk that it may be misunderstood. The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."*

37. As Lord Justice Lewison put it in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114]:

> *"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them…."*

38. Lord Justice Lewison set out the reasons for this proposition which included:

> *….iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.*
>
> *iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*
>
> *v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).*

39. This principle applies to cases such as the present where the critical evidence was in the real time recordings of the relevant events. Having said that, the existence of those recordings places the appellate court in a different position to the ordinary case. Although oral evidence was given by PC Pringle, nothing he said could contradict what was recorded on the BWV footage. The observation of Lady Justice Hallett in *McCarthy* at [17] is apposite:

> *"….the general principle is that an appellate court should not interfere too readily with a trial judge's factual conclusions. The*

> *trial judge has the significant advantage of seeing and hearing the witnesses give their evidence. However, in this case very little evidence was disputed. Most of the Recorder's findings of fact came from the CCTV footage and we are not being asked to overturn them. It is the conclusions he drew from those findings of fact that are subject to challenge. To my mind, as an appellate court we are in an unusually good position to determine whether those conclusions were justified."*

40. It is not suggested by the appellant that the court should substitute its view of what happened for that of the trial judge. Rather, the question is whether the conclusions she drew from the evidence were ones reasonably open to her. The court is concerned inter alia with the objective reasonableness or proportionality of PC Pringle's actions. That is a matter of law: see *Dallison v Caffrey* [1965] 1 QB 348 at 372A.

**Discussion**

41. As I have said, there is no challenge to the judge's finding that PC Pringle held an honest belief that it was necessary to use force. It is accepted that this is essentially a finding of fact. It may be that the judge was generous in her findings in relation to what the officer said on the Use of Force form and in his MG11 statement about the actions of the appellant in the moments leading up to the use of the taser. Had she found that his statements were deliberate misrepresentations of what happened, that would have been relevant to the issue of honest belief. She did not reach that view. She explained her reasons for doing so. Her conclusion was one that was reasonably open to her. On the question of the officer's honest belief, the judge had the advantage of seeing and hearing PC Pringle's oral evidence.

42. Whether PC Pringle's honest belief as the judge found it to be was objectively reasonable was a mixed issue of fact and law. For the reasons set out above the judge's conclusion as to the officer's honest belief that it was necessary to use force is not open to challenge. But the fact that the officer held that honest belief of itself cannot make it a reasonably held belief. In my view the judge's conclusion on this issue did not fully address the reasonableness of the belief. The factors she identified as I have set out in short form were what led to PC Pringle holding his honest belief as to the need to use force. The judge did not explain in explicit terms why those factors made the belief one that was reasonably held. However, the judge's finding of fact was that the situation was "fast-moving". This was a significant feature of her determination of the reasonableness of the officer's belief. She referred to this feature twice in the course of her analysis of the issue. A comprehensive assessment of the way in which the situation unfolded necessarily involved consideration of the oral evidence of the witnesses. To make such an assessment simply by reference to the BWV risks encroaching on the proper function of the trial judge. In the light of the judge's finding on this point I do not consider that the judge's determination that PC Pringle's belief that it was necessary to use force was objectively reasonable can be overturned.

43. I take a different view in relation to the question of whether the force used, namely the use of a taser, was objectively reasonable. The judge did not consider the proportionality of using a taser in the circumstances as she found them to be. She considered two options which had been raised during the trial. She rejected each of

those options. She did not stand back and ask whether the use of a weapon which carried the risk of serious injury to the appellant was a reasonable response to the situation.

44. The judge was aware that the APP guidance indicated that a taser was not to be used as a compliance tool. She accepted that there had been an element of such use by PC Pringle. Although the judge also found that there remained some threat which went to the reasonableness of the officer's honest belief as to the need to use force, she did not consider how the use of the taser as a compliance tool affected the proportionality or objective reasonableness of its use. It went to the critical question: was the use of a taser proportionate and reasonable?

45. In her assessment of the objective reasonableness of the use of a taser, the judge referred to PC Pringle having to make a split-second decision as to whether to engage the appellant in further negotiation or whether to discharge the taser. The judge was wrong to say that the situation as shown on the BWV footage involved a split-second decision by the officer. The appellant had been standing facing and talking to Mr Cole for at least 20 seconds before he folded his arms. He was in that position for another few seconds before the taser was discharged. Objectively, the officer was not faced with or forced into a split-second decision. More to the point, the binary choice identified by the judge did not involve any consideration of whether using a taser per se was reasonable. Even if "further negotiation with the (appellant) would be futile", that did not mean that it was proportionate to use a taser on him. He was standing and talking to his friend. A proper objective analysis of whether using a weapon classified as a firearm was reasonable would have led the judge to conclude that it was not. Her conclusion that further negotiation would have been futile did not amount to the necessary analysis of objective reasonableness of the nature and degree of force used.

## Conclusion

46. In my judgment the appeal should be allowed. The use of a taser was not objectively reasonable in the circumstances notwithstanding PC Pringle's honest belief as to the need to use force. The trial judge made findings on all issues in relation to quantum in case she were found to be wrong in relation to any aspect of the merits of the appellant's claim. Neither party seeks to challenge those findings. An award of general and special damages in accordance with the conclusions of the judge will follow.

## LORD JUSTICE DINGEMANS

47. I agree with both judgments.

## THE BARONESS CARR OF WALTON-ON-THE-HILL, LCJ

48. I also agree. Mr Clayton KC for the appellant focussed heavily on PLAN, submitting that the judge erred in failing to consider lawfulness by reference to PLAN ie the APP guidance requiring discharge to be "proportionate, lawful, accountable and absolutely necessary". It is not surprising that the judge did not carry out this exercise, not least given that PLAN (and any breach of PLAN) was not relied upon before her. In any event, I do not consider that PLAN adds materially to the requirement of reasonableness; notions of proportionality and necessity are inherent in that requirement.

49. Beyond that, as William Davis LJ identifies, tasers are prohibited firearms. They are potentially lethal weapons (see MCCarthy at [18]). PC Pringle had agreed in evidence that the appellant could have been killed by the use of the taser. The use of a taser on the appellant, who at the time of discharge was standing still in a non-aggressive stance with his arms folded and talking to his friend, was not objectively reasonable in the circumstances.