

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2025] SC EDIN 38

PIC-PN3324-23

JUDGMENT OF SHERIFF IAIN W NICOL

in the cause

DAVID DAWSON

Pursuer

against

JONATHAN THREADGOLD

First Defender

PHILIP DICKSON

and

Second Defender

CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND

Third Party

Pursuer: Self-representing

First and Second Defenders: Christie and Ferguson, Levy & McRae, Solicitors LLP, Glasgow

Third Party: Haggerty, Police Service of Scotland Legal Department, Dundee

Edinburgh 25 June 2025

Background

[1] This action is brought by the pursuer against two named police officers and the Chief Constable of Police Scotland in relation to allegations of unreasonable force being used by the officers at the time of, and subsequent to, the pursuer's arrest on 11 June 2021. The case proceeded to proof on 25 and 26 March 2025 and 6 May 2025. The pursuer represented

himself. The individual officers were represented by the same solicitor and the Chief Constable had separate representation. Damages of £12,000 (£6000 per officer) were craved by the pursuer. There was no crave for interest or expenses. Liability was in dispute.

[2] Given that the pursuer is a party litigant who had various misunderstandings about procedure and the law on evidence, and frequently challenged rulings made by the court, this judgment is longer and contains a more comprehensive analysis of the evidence and legal considerations than would normally be the case.

Findings in Fact:

[3] The pursuer was driving his VW Golf along Alderstone Road, Livingston at around 7.45 pm on 11 June 2021.

[4] The first and second defenders were (and are) police officers employed by The Police Service of Scotland. On 11 June 2021, at around 7.45pm, the first and second defenders were on duty in a mobile police vehicle, a BMW X5. They were performing random checks on vehicles to establish, amongst other things, if the vehicle had a valid MOT certificate. The pursuer's vehicle passed them. The second defender inputted the registration number for the pursuer's vehicle into his hand held device to check the status of the vehicle on the police national computer. This revealed the vehicle had no valid MOT.

[5] The first and second defenders followed the pursuer's vehicle and required the pursuer to stop. The pursuer pulled into a bus stop. The police vehicle parked directly behind the pursuer's vehicle.

[6] The police vehicle was fitted with a dash cam, the position of which partially recorded a view of the pursuer's vehicle and subsequent events at the scene.

[7] The first defender exited the police vehicle first and approached the passenger side. After an initial exchange through the closed window of the vehicle, the first defender opened the passenger door. The pursuer asked him to close it, which he did, and the pursuer lowered the window on the passenger side of his vehicle.

[8] The first defender explained to the pursuer that he had been stopped for failing to have a valid MOT certificate. The pursuer was offered a fixed penalty notice for a contravention of Section 47(1) of the Road Traffic Act 1988. He declined to accept the fixed penalty notice.

[9] The first defender asked the pursuer for his name, address and date of birth in terms of Section 13 of the Criminal Procedure (Scotland) Act 1995. The pursuer handed the first defender his driver's licence through the passenger side window. He was asked by the first defender to confirm his current address. He refused to do so.

[10] The second defender joined the first defender at the passenger side of the pursuer's vehicle. The officers continued their dialogue with the pursuer, repeatedly asking him to confirm his current address as they required that to include in their report to the procurator fiscal to enable the pursuer to be cited to appear in court. He continued to refuse to provide that, saying words to the effect "that is what my licence says" and that he did not "conform to statute".

[11] The pursuer repeatedly asked the first and second defenders to return his licence to him. They refused as they had not received confirmation of the pursuer's current address.

[12] Whilst standing at the passenger side of the pursuer's vehicle, the second defender clapped his hands, made a gesture which involved raising his right arm with his fist clenched, waved his fist in the air and laughed. This was borne out of frustration at the pursuer's attitude and lack of cooperation.

[13] The pursuer was told by the first and second defenders that they intended to examine his vehicle. The pursuer refused to permit such an examination despite the officers having the power to do so in terms of Section 67 of the Road Traffic Act 1988.

[14] The pursuer told the officers to keep his licence, he would get another one. The pursuer threatened to drive away. He was holding his car key in his right hand and moved it towards the vehicle ignition.

[15] The first and second defenders walked round the front of the pursuer's vehicle to the driver's side. They continued to try to engage with the pursuer, giving him further opportunities to confirm his address to avoid arrest. The pursuer continued to refuse to do so. Instead, the pursuer dialled 101 to make a complaint about the first and second defenders. The call took some time to connect during which period the pursuer was informed that he was under arrest for failing to provide his current address details in terms of Section 13(1) of the Criminal Procedure (Scotland) Act 1995.

[16] The first and second defenders, at the time of arresting the pursuer, were positioned on the driver's side of the pursuer's vehicle, standing adjacent to a live lane of traffic.

[17] The first and second defenders instructed the pursuer to get out of his car as he was under arrest for committing an offence under Section 13 of the 1995 Act. He refused to do so. The first and second defenders reasonably formed the view that the pursuer would continue to refuse to cooperate or voluntarily alight from his vehicle given the repeated opportunities he had been given to cooperate throughout the incident. At approximately 7.58pm, one of the officers opened the driver's door and the pursuer was forcibly removed from the vehicle to effect the arrest when the pursuer was still attempting to telephone 101. As a result, the pursuer dropped his phone on the ground beside his vehicle. After dropping his mobile telephone on the ground the call was answered by a male caller handler

at the Police Scotland control room. The police call handler asked for a response. The sound from the locus is muffled and not clearly audible.

[18] The second defender initially applied one handcuff to a wrist of the pursuer upon removing him from his vehicle.

[19] The second defender pushed the pursuer to the front of the police vehicle to get away from the live lane of traffic.

[20] The process of handcuffing the pursuer's arms behind his back was completed when the pursuer was leaning over the bonnet of the police vehicle.

[21] The use of handcuffs to the rear was a reasonable use of force throughout the incident for the purposes of safety and control.

[22] The rear seat of the first and second defenders' police vehicle was covered with their personal belongings. Those belongings could have been cleared to enable the pursuer to be seated in the rear of the police vehicle.

[23] The first and second defenders took the decision not to place the pursuer in the back of their vehicle but instead to use force to put him to ground by initially each grabbing an arm and letting go of the pursuer, causing him to fall, unsupported, and strike his left forehead on gravel on the ground. As a result, the pursuer sustained injury to his left forehead and neck which caused pain and discomfort for up to 28 days.

[24] The first and second defenders' actions in putting the pursuer to ground as opposed to opting for placing him in the back of the police vehicle was not in accordance with police policies and procedures in relation to the use of reasonable force.

[25] The first and second defenders' actions in allowing the pursuer to fall to the ground was not in accordance with police policies and procedures in relation to the use of reasonable force.

Findings in Fact and Law:

[26] The level of force used by the first and second defenders to remove the pursuer from his vehicle, transfer him to the bonnet of the police vehicle and handcuff him was reasonable.

[27] The level of force used by the first and second defenders in putting the pursuer to ground, as opposed to placing him in the back of their vehicle, was unreasonable and amounts to a breach of the duty of care which they owed to the pursuer.

[28] The level of force used by the first and second defenders in allowing the pursuer to fall unsupported to the ground was unreasonable and amounts to a breach of the duty of care which they owed to the pursuer.

[29] The third party is vicariously liable for the first and second defenders' breaches of duty of care.

Findings in Law:

[30] The pursuer is entitled to reparation from the defenders and third party for the loss, injury and damage sustained when he fell, unsupported, to the ground.

[31] A reasonable estimate of the pursuer's loss injury and damage is £1,742.30 inclusive of interest to today's date.

Summary of Evidence:

Pursuer

[32] The pursuer was stopped by the police for failing to have a valid MOT. He declined the Fixed Penalty notice he was offered. He handed them his driving licence when asked for

his details. He was not asked to confirm that his address remained current, simply what his name and address was and he referred the defenders, who were at the passenger side of his vehicle, to the terms of his licence. He denied that the officers stated that if he failed to confirm his current address he would be arrested. The officers moved round to the driver's side of his vehicle.

[33] The pursuer tried to make a call to the police to complain about the conduct of the first and second defenders. He continued speaking to the first and second defenders whilst waiting for his call to the police to connect. He denied threatening to drive away or moving the keys towards the ignition. He was then forcibly removed from his vehicle by the first and second defenders to effect an arrest. He dropped his mobile telephone as he was removed from his vehicle. He was led over to the front of the police vehicle. His baseball cap was removed and, with his hands behind his back, he was slammed onto the bonnet of the police vehicle and handcuffed with his arms behind him. His recollection was he was pushed up against the car bonnet, then handcuffed then taken off the bonnet and let go of by the people who were holding onto him. He could not protect himself from falling. He was dropped "head first" onto an area between tarmac and grass. Under cross examination the pursuer's wording changed to "either put on the ground or dropped to the ground". The fall caused him to sustain injury when he struck the ground. Audio was played relating to the initial attempt to call Police Scotland including the period after the telephone fell to the ground. He stated that he could be heard repeatedly saying "You've just hit my head on the ground". The pursuer referred to photographs which had been lodged. The photographs of his head showed marks to his forehead which he said were caused by gravel or small stones on the ground. Photographs of his arms showed bruising to his wrists and forearms.

[34] On arriving at Livingston Police Station the pursuer was given the option of waiting an hour to be processed or be “de-arrested” if he confirmed his current address. He co-operated at that stage by providing his details. He was taken back to his vehicle and was asked by the first and second defenders if he wished them to take him to St John’s Hospital. He declined.

[35] Following his return to his vehicle, the police control room telephoned him and recorded his complaint. The 2 audio clips of that call were played.

[36] Six months later he received a summary complaint containing 5 charges. This arrived in the same week as he received a response from Paul Cooper, Investigator in the Police Professional Standards department, advising that his complaint about the first and second defenders was not being upheld. He subsequently stood trial in Livingston Justice of the Peace Court and was convicted of failing to 1) have a valid MOT certificate, 2) update the details on his licence 3) allow the police to examine his vehicle and 4) provide his name and address to the police. He was acquitted of a charge of resisting arrest.

[37] The pursuer initially attended St John’s hospital but the wait time was lengthy. He later attended Edinburgh Royal Infirmary where he was examined. He spoke to the terms of the ERI documentation recording his attendance. He sustained a stinging sensation every day for the next month or two which then dissipated. He suffered swelling, which was not visible due to his hair, and a lump on his head. He suffered headaches for 6 months. His personality changed and he was more short-tempered over a few months. Compensation was not his motivation, he wanted to hold the police to account for what they did to him.

[38] The pursuer spoke to the terms of various documents which had been lodged as outlined in the discussion section below.

The First Defender – PC Jonathan Threadgold

[39] PC Threadgold, along with PC Dickson, was on mobile patrol in Livingston when, as part of a routine check of vehicles, they stopped the pursuer's vehicle for failing to have a valid MOT. He initially spoke to the pursuer whilst at the passenger side of the pursuer's vehicle, explaining the reason for the stop. He offered the pursuer a fixed penalty notice. The pursuer refused the fixed penalty so was asked for his personal details to enable a report to be submitted to the procurator fiscal. The pursuer handed over his driving licence. The pursuer was argumentative and constantly spoke over the officer. PC Threadgold asked the pursuer to confirm that the address as shown on the licence was current. The pursuer simply referred the officer to the terms of his licence. Repeated requests were made to the pursuer to confirm his address. When he continued to be evasive he was warned that his failure amounted to a contravention of Section 13 of the Criminal Procedure (Scotland) Act 1995. The pursuer was informed that he would be arrested if he did not confirm that his address was current. The pursuer told the officer to keep his licence, he would get another one and threatened to drive away. Whilst the officers were still at the passenger side of the pursuer's vehicle, the pursuer had his car key in his right hand and moved it towards the ignition.

[40] The officers moved to the driver's side of the vehicle and informed the pursuer that he would be arrested if he failed to comply. The warning was ignored and the officers proceeded to arrest the pursuer. The driver's door was opened and they forcibly removed the pursuer from the driver's seat. The pursuer was cautioned.

[41] Officers attend an annual training course on safety techniques. The main factor in deciding whether force is necessary is safety. The force has to be proportionate, reasonable and ethical. The officers were standing adjacent to a live line of moving traffic and they had

no other option but to physically remove the pursuer from his vehicle. As the pursuer was unpredictable and uncooperative they required to use physical force by pushing him towards the police vehicle to get him away from the lane of traffic. Handcuffs were applied to the rear.

[42] Once applied he was moved to the front passenger side of the police vehicle furthest from the road. The pursuer was lowered to the ground by the officers on either side. They did not let go of the pursuer at any point. He was placed on his side. To place him on his front could restrict breathing. When asked about the pursuer's evidence that he had sustained grazing and minor lacerations to his forehead PC Threadgold's position was that he had "no idea how that was sustained".

[43] Another police vehicle was requested to take the pursuer to Livingston Police Station. When it arrived, PC Arbuthnot and a female officer conveyed the pursuer to the police station. It was going to take an hour to process the pursuer so he was given a further opportunity to comply and provide his details. The pursuer's demeanour then completely changed and he provided the details so was "de-arrested". The pursuer was taken back to his vehicle where a brief examination of the vehicle was carried out. The pursuer declined an offer of medical assistance. The pursuer's behaviour was the worst he had seen in his police service.

[44] Under cross examination he spoke to carrying out a random check on the pursuer's vehicle and parking the police vehicle in a way to make it as visible as possible. He recalled PC Dickson clapping his hands and shaking his fist but could not say why he did that. The pursuer repeatedly failed to provide confirmation of his address. It was not normal behaviour for someone stopped without an MOT to threaten to drive off but by that stage the pursuer had been informed he would be arrested if he did not confirm his address. He

could not recall if the threat to drive away was repeated when the officers were on the driver's side.

[45] The pursuer was handcuffed as soon as he was removed from the vehicle, initially to the front. The pursuer was struggling and resisting arrest so moved over to the front of the police vehicle out of the line of traffic. The pursuer's baseball cap was removed when he was taken over to the police vehicle but could not remember by whom. This was done to prevent injury when someone was placed on the ground. When leaning over the police vehicle's bonnet, the handcuffs were applied to the rear. The pursuer was behaving erratically and uncooperatively, failing to follow instructions. It was his decision whether to apply handcuffs. He judged it necessary due to the pursuer's refusal to exit his vehicle, listen to instructions and the fact that they were removing the pursuer from his vehicle into a live lane of traffic. This ensured the officers had proper control of the pursuer whilst adjacent to passing traffic. He disagreed that handcuffs were more appropriate for someone who had committed a violent or drug related offence. Handcuffs were applied because of the way the pursuer was behaving.

[46] He denied putting the pursuer in the prone position on the ground, which is a position he tries to avoid as it can cause asphyxia. The prone position can be used to enable handcuffs to be applied. Handcuffs were applied before he was placed on the ground. The pursuer remained on the ground until collected as it was easier to control the pursuer and watch him. There was no ongoing physical control. The pursuer was under control but not under full control as he was not compliant.

[47] There was no room in the rear of the police vehicle as it was full of the officers' personal belongings and is not something they would normally do. On the ground was a safer position than standing up, partly for his own protection.

[48] He denied that there was any connection between the issuing of the complaint by the procurator fiscal and the dismissal of the pursuer's complaint by the police professional standards investigator. He did not know why sections of the dash-cam footage appeared to be missing from what had been supplied to the pursuer as the footage had never been in his possession.

[49] In re-examination PC Threadgold confirmed the nature of the offence which he was dealing with had nothing to do with the need to use reasonable force. The decision to keep the pursuer on the ground was based on risk. If standing, the lower part of a suspect's body can kick out at the officers.

Sergeant Liam Arbuthnott

[50] He is an acting police sergeant with almost 11 years' experience. He outlined his police training which included public order training. He attended the scene where the pursuer had been arrested to convey him to Livingston Police Station in a van. He noticed the pursuer was on the ground, handcuffed to the rear. The pursuer was refusing to cooperate or take a telling. The pursuer was agitated, continuously talking over PCs Threadgold and Dickson. He denied seeing any injuries on the pursuer nor did he recall the pursuer raising any concerns. Under cross examination he was not concerned that the pursuer was lying on the ground and had not been lifted to his feet. He described the pursuer as being in the prone position, lying head first, chest on the ground. He could not recall if the other officers were on the pursuer or standing beside him. He had no concerns about the officers' behaviour.

PC Philip Dickson

[51] He is a police constable with 17 years' police service. He was working with PC Threadgold on 11 June 2021, monitoring traffic in Livingston. He carried out a random check on the pursuer's vehicle, found it did not have a valid MOT and the officers therefore followed the pursuer, signalled for him to stop and parked behind his stationary vehicle. Both officers got out of their vehicle. PC Threadgold spoke initially to the pursuer on the passenger side, for safety reasons. PC Dickson was there to corroborate. He described the pursuer's reaction as over the top when informed of the reason why he had been stopped. A fixed penalty was offered on numerous occasions by PC Threadgold but declined as the pursuer did not believe he required to conform to that legislation and there was no requirement for it. The pursuer also refused consent to allow the officers to inspect the road worthiness of his vehicle notwithstanding no consent is required. This was also explained to the pursuer.

[52] When asked for his details, the pursuer handed over his driving licence and said the details would be found on that. He was asked to confirm the address was still current but the pursuer refused to do so. The requirements of section 13 of the Criminal Procedure (Scotland) Act 1995 were explained by both officers. The pursuer's behaviour was irrational, unwarranted and outrageous. He threatened to drive off when he had the keys in his hand. PC Dickson said he clapped his hands and shook his fist because of the pursuer's outrageous behaviour and the fact they were being accused of targeting the pursuer by setting out to stop him. He accepted he was frustrated. It was not something he tended to do and he accepted that someone may think it was a bit over the top. They were left with no option but to arrest the pursuer. They moved round to the driver's side and gave him a last chance to engage. He said the pursuer's reaction was to move to drive away. They had

spent over the normal length of time with someone who did not have an MOT. The pursuer refused to get out of his vehicle so they opened the door and put hands on him to remove him. He would have taken hold of the driver on the arm and upper body as would PC Threadgold. He handcuffed the pursuer on one wrist as they got the pursuer to stand upright out of the vehicle. The pursuer was resisting. They were in a position they did not want to be in, namely, with the car door open standing next to a line of traffic so they wanted to get him to the nearside. Force was required to move the pursuer to the front of the police vehicle. He was placed on the bonnet of the police vehicle and handcuffed to the rear. Only one wrist had been cuffed up to that point.

[53] The pursuer was then placed on the ground to the nearside of the police vehicle. This was done in line with his training. The officers were either side of the pursuer, holding him and bearing his weight as they took him to the ground in a controlled manner. He denied dropping the pursuer. Force was reasonably used to achieve the objective of arrest. The force was not excessive because after the objective is met it ceases. The suspect's behaviour determines whether force should be used. The offence has no bearing on that. No injury on the pursuer was observed and he did not knock his head off anything. A van was summoned due to the pursuer's non-compliance. He did not want the pursuer in the back of a marked police vehicle. On arrival of the van the pursuer was stood up and put in the van. At the station the pursuer was given a further opportunity to cooperate. His demeanour changed and he provided his details. He was taken back to his car. A basic mechanical check of the pursuer's vehicle was carried out and they then left him. Any bruising to his arms may have been sustained whilst struggling in handcuffs.

[54] In cross examination, PC Dickson confirmed that he and PC Threadgold had arrived together at the court for this proof in a hired vehicle. When parking a police vehicle behind

a suspect's vehicle the position is determined by safety issues, not what the dash-cam can view. As to why an arrest was required, it was justified because the pursuer said that he was going to drive off and also based on what he was physically doing i.e. the keys going towards the ignition. This happened whilst the officers were communicating with the pursuer on both sides of the vehicle. He reacted to what he considered to be childish and abnormal behaviour by clapping his hands, smiling and shaking his fist. It was meant to convey "good on you" because of the pursuer's grandstanding. The pursuer's behaviour in alleging it was a set up was outlandish and preposterous. The driver's door was opened to effect the arrest as the pursuer was refusing to come out of the car. This followed a further period, at the driver's side, of trying to reason with him. The pursuer was potentially threatening to drive off when making the phone call in his car. The arrest was for a failing to provide the details required under section 13 of the 1995 Act. One handcuff was applied as the pursuer got out of his vehicle. As he was taken to the front of the police vehicle, he was not cuffed to the front or rear, simply one cuff to one wrist. If someone is struggling, the best case scenario for handcuffing is to the rear but that is not always possible. The decision to handcuff to the rear was taken when at the bonnet of the police vehicle as it was a fluid situation. He accepted his police statement was wrong when it says the pursuer was handcuffed to the front. He agreed the dash-cam footage shows it was to the rear. It is his call whether handcuffs are applied. The pursuer was forcibly removed from his vehicle because he was under arrest, was refusing to get out of his vehicle, was on the telephone and not verbally engaging with the officers.

[55] In response to the police guidance on the use of force being put to him, he stood by his position that the use of force was reasonable and proportionate. On being asked why the situation was "so frantic" after the pursuer was removed from his vehicle, PC Dickson said

he needed to get control of the pursuer's arms and needed to handcuff him to get full control as the pursuer was still struggling. Two handcuffs were needed to get the pursuer under full control. The position of the handcuffs was "back to back" (back of hands together), not stacked (arms one above the other).

[56] As to why the pursuer was put on the ground, this ensured he was under the best possible control as he was completely immobilised and could not react in any way. If standing, legs are mobilised. The pursuer was placed on the ground on his side, not the prone position. An audio clip of sound recording said to be from the pursuer's mobile phone lying on the ground at the time the pursuer was on the ground was played. It was suggested that the pursuer could be heard repeatedly saying "You've smashed my head into the ground" and he was asked whether he could say why the pursuer had said that. He said he could not. He denied being able to see any injury on the photograph of the pursuer's head and could not explain why that happened. He confirmed that each officer, either side of the pursuer and bearing his weight, took him to the ground in a controlled manner. He remained on his side. He thought there would have been contact by an officer on the pursuer throughout the time he was on the ground waiting for the van to arrive but could not remember which officer had contact with him. There was a risk of the pursuer not being under full control if he was standing. The officers did not know the pursuer, there was no known intelligence on him, and the pursuer's behaviour led the officer to his actions that day. The pursuer was not charged that day for fear of re-igniting the situation which had been resolved. He had no knowledge of any missing dash-cam footage and could not explain its absence.

[57] In re-examination, he said applying only one handcuff is a danger. This was not explained but a reasonable inference is that the pursuer still had use of the arm which was

not handcuffed and was acting irrationally in the eyes of the officer, which created a potential danger. The dash-cam shows PC Dickson with a sense of urgency to get the other cuff on. He said it was his call to decide whether to cuff to the front or back. He is no medical professional but he could see no injury consistent with the pursuer's head being banged off a concrete pavement.

Submissions

[58] At the conclusion of the evidence, I appointed parties to draft and exchange written submissions with seven days and then lodge final submissions within the following seven days. Given that the pursuer is a party litigant, I considered this to be the best way to proceed. Guidance was issued via the sheriff clerk as to how submissions should be structured. I indicated that only if there was something arising from the written submissions which I wished to be addressed on would I arrange an oral submissions hearing.

[59] All parties submitted written submissions timeously. One issue arose, namely the defenders' suggestion in their written submissions that the onus fell on the pursuer to prove that the level of force used by the first and second defenders was reasonable. An interlocutor was issued appointing a hearing for me to be addressed on that specific issue as it appeared to me that may be an erroneous statement of the law. The interlocutor made it clear that was the only issue which I needed parties to address me on and reference was made to what I considered may be relevant English authority.

[60] In advance of the oral submissions hearing the defenders lodged supplementary written submissions which appeared to accept that the test to be applied in determining whether force was reasonable was that which is set out in *Amadu-Abdullah v Commissioner of*

Police of the Metropolis [2024] EWHC 3162 (KB), discussed more fully below. At the hearing on 2 June 2025 the defenders confirmed that their view that the onus fell on them to satisfy the court that reasonable force had been deployed throughout. During the hearing, the pursuer became argumentative as to why the case was calling at all. He had clearly misunderstood the terms of the interlocutor appointing the hearing, something he eventually conceded. I then made avizandum.

[61] Subsequent to that hearing the pursuer tendered additional written submissions. These were not considered a) because the time limit for lodging submissions had passed b) the pursuer indicated that he was submitting these because he had not considered the defenders' original submissions despite having been provided with a draft of those timeously c) as the case was now at avizandum and there was no mechanism for the defenders to consider and respond to anything said in the supplementary submissions and d) in any event the pursuer's original written submissions were extensive and adequately addressed what the court expected to be included in written submissions.

The Law

[62] All parties lodged lists of authorities. The highlighting of relevant sections of some of the pursuer's authorities was not undertaken initially and on being asked to correct that limited highlighting was undertaken. The relevance of some authorities was not made clear.

a. For the pursuer:

1. *Ashley (FC) and another (FC) (Respondents) v Chief Constable of Sussex Police* [2008] UKHL 25
2. *Edwin Afriyie v City of London Police* [2024] EWCA Civ 1269
3. *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 ·

4. *Walker-Brown v Metropolitan Police* (2024),
5. Reference made to Judicial College Guidelines – no edition cited and merely extracts provided.
6. *Ruddy v Chief Constable, Strathclyde Police & Anor* [2012] UKSC 57
7. *Napier v Scottish Ministers* 2005 SC 307
8. *McPhee v Chief Constable Of Central Scotland Police* [2005] ScotCS CSIH_29
9. *Downie v Chief Constable, Strathclyde Police* 1998 SLT 8
10. *Donoghue v Stevenson* 1932 SC (HL) 31
11. *Downie v Chief Constable, Strathclyde Police* 1997 S.C.L.R. 603
12. *Mohamud v WM Morrison Supermarkets plc* [2016] UKSC 11
13. *R v Waterfield* [1964] 1 QB 164
14. *Majid v Chief Constable Police Scotland* 2015 WL 8131333

b. For the first and second defenders:

1. *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4
2. *Davies v Swan Motor Co Swansea Ltd* [1949] 2 K.B. 291
3. *Caswell v Powell Duffryn Associated Collieries Limited Respondents* [1940] AC 152
4. *Porter v Strathclyde Regional Council* 1991 SLT 446
5. *Jones v Livox Quarries Ltd* [1952] 2 QB 608
6. *Corporacion Nacional Del Cobre De Chile v Sogemin Metals Ltd and Others* [1997] 1 W.L.R 1396
7. *Standard Chartered Bank v Pakistan National Shipping Corporation and Others* No 2 [2003] 1 AC 959
8. *Patel v Mirza* [2016] UKSC 42

9. *Gray v Thames Trains Ltd and another* [2009] 1 AC 1339
10. *Amadu-Abdullah v Commissioner of Police of the Metropolis* [2024] EWHC 3162 (KB)
11. Section 45 of the Criminal Justice (Scotland) Act 2016
12. Section 1 of the Law Reform Contributory Negligence Act 1945
13. Section 90 of the Police and Fire Reform (Scotland) Act 2012
14. Section 47 of the Road Traffic Act 1988
15. Section 99 of the Road Traffic Act 1988
16. Section 13 of the Criminal Procedure (Scotland) Act 1995
17. Section 67 of the Road Traffic Act 1988

c. For the Third Party (in addition to adopting the authorities for the first and second defenders):

1. *Beaumont v Ferrer* [2016] R.T.R 25

[63] *Robinson* is authority for the proposition that police officers owe a duty of care to the public when exercising powers of arrest. It was accepted by the defenders that they owed the pursuer a duty of care at the time of, and subsequent to, his arrest when he was in their custody. It was accepted that the police were only entitled to use reasonable force i.e. the minimum force required to achieve the lawful objective.

[64] The salient parts of the cited legislation which are relevant to this case are:

1. **Criminal Procedure (Scotland) Act 1995 Section 13 - Powers relating to suspects and potential witnesses.**

“(1) Where a constable has reasonable grounds for suspecting that a person has committed or is committing an offence at any place, he may require—

- (a) that person, if the constable finds him at that place or at any place where the constable is entitled to be, to give the information mentioned in

subsection (1A) below and may ask him for an explanation of the circumstances which have given rise to the constable's suspicion;

- (1A) That information is—
 - (a) the person's name;
 - (b) the person's address;
 - (c) the person's date of birth;
 - (d) the person's place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person's identity); and
 - (e) the person's nationality.
- (2) The constable may require the person mentioned in paragraph (a) of subsection (1) above to remain with him while he (either or both)—
 - (a) subject to subsection (3) below, verifies any information mentioned in subsection (1A) above given by the person;
 - (b) notes any explanation proffered by the person.
- (3) The constable shall exercise his power under paragraph (a) of subsection (2) above only where it appears to him that such verification can be obtained quickly.
- (4) A constable may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with him.
- (5) A constable shall inform a person, when making a requirement of that person under—
 - (a) paragraph (a) of subsection (1) above, of his suspicion and of the general nature of the offence which he suspects that the person has committed or is committing;
 - (b) subsection (2) above, why the person is being required to remain with him;
 - (d)that failure to comply with the requirement may constitute an offence.
- (6) A person mentioned in—
 - (a) paragraph (a) of subsection (1) above who having been required—
 - (i) under that subsection to give the information mentioned in subsection (1A) above....fails, without reasonable excuse to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale;"

2. Road Traffic Act 1988 Section 47 - Obligatory test certificates.

- “(1) A person who uses on a road at any time, or causes or permits to be so used, a motor vehicle to which this section applies, and as respects which no test certificate has been issued within the appropriate period before that time, is guilty of an offence.

In this section... the ‘appropriate period’ means a period of twelve months or such shorter period as may be prescribed.”

3. Police and Reform (Scotland) Act 2012 Section 20 - Constables: general duties

- “(1) It is the duty of a constable—
- (a) to prevent and detect crime,
 - (b) to maintain order,
 - (c) to protect life and property,
 - (d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,

4. Criminal Justice (Scotland) Act 2016 Section 1 - Power of a constable

- (1) A constable may arrest a person without a warrant if the constable has reasonable grounds for suspecting that the person has committed or is committing an offence.
- (2) In relation to an offence not punishable by imprisonment, a constable may arrest a person under subsection (1) only if the constable is satisfied that it would not be in the interests of justice to delay the arrest in order to seek a warrant for the person's arrest.”

The applicable test in relation to Reasonable Force

[65] As in any reparation claim, the court must decide, on the balance of probabilities, what the facts are. The onus is on the pursuer to prove those facts by leading evidence which the court is prepared to accept as credible and reliable. What may be less obvious in a case of this nature, where there is an allegation by a pursuer that the level of force used by police officers was unreasonable, is that the onus shifts onto the police to prove that the force was reasonable: *Amadu-Abdullah v Commissioner of Police of the Metropolis (supra)*. Parties ultimately agreed that the test set out in that case should be applied.

[66] *Amadu-Abdullah* sets out a two stage “trigger and response” test which I must apply in assessing the issue of reasonable force:

1. the trigger: the court determines what the police officer or officers subjectively, honestly understood the facts to be which he asserts / they assert justified the use of force. If the officer made a mistake as to the facts, he can only rely on that mistake if it was a reasonable one to make.
2. the response: the court decides objectively whether the use of force was reasonable on those facts.

Discussion

[67] This action was raised under Chapter 36 of the Ordinary Cause Rules as a reparation action in the All-Scotland Sheriff Personal Injury Court, exercising the court's All-Scotland jurisdiction. The Record reveals that the pursuer alleges both breach of statutory duty and fault at common law although the pleadings do not make reference to any specific statute or regulation which is alleged to have been breached. There is no notice of any alleged breach of the Human Rights Act 1998 nor the European Convention on Human Rights which would form the basis of any claim for damages.

[68] The pursuer's pleadings aver: that the first and second defenders dragged him from his vehicle without warning; he had provided them with his driving licence and had asked for it back several times; that no warning of any arrest was given nor any reason for arrest; he was not handcuffed to the front but instead handcuffed behind his back whilst dragging him along the ground towards their police vehicle; they slammed him on their bonnet, dragged him off the bonnet and dropped him around 5 feet in the air on his head when he had no means to support himself; the officers then proceeded to jump onto his back, crushing his shoulders, neck and back; he suffered serious injuries resulting in physical,

emotional and psychological damage including anxiety and physical pain, severe PTSD and headaches for 6 months.

[69] The defender's pleadings admit the first and second defenders were acting in the course of their employment with the third defender, who is vicariously liable for any negligent conduct on their behalf. All defenders pled an *ex turpi causa* defence and all averred that, if there was any negligence, any award should be reduced to reflect contributory negligence on the part of the pursuer.

[70] The following narration is based on the evidence which I have held to be credible and reliable, and, where appropriate, refers to those parts of the evidence which I have rejected and any aspects where evidence might have been helpful but was not led.

[71] The pursuer was stopped by the first and second defenders for failing to have a valid MOT for his vehicle. It was suggested by the pursuer they had targeted him. The evidence does not bear that out.

[72] There is no dispute that the pursuer did not have a valid MOT and he was subsequently convicted for that offence as well as failing to provide his home address, having an incorrect home address on his licence and refusing to allow his vehicle to be examined.

[73] Part of what ensued was recorded by the dash-cam in the police vehicle. On stopping the pursuer, the first, then second, defender approached the passenger side of his vehicle. The pursuer was told why he had been stopped and was offered a fixed penalty notice. He declined that. He made a comment along the lines that he did not consider he was subject to that legislation. He was asked for and handed over his driving licence. He was asked by the first and second defenders, amongst other things, to confirm his address. Experience told them that an address displayed on a licence is not necessarily the current

address of the licence holder and indeed it subsequently proved to be the case that the address on the pursuer's licence had not been updated by him.

[74] The pursuer repeatedly told the officers that they had the information they needed on his licence. He was lying. He was asked on several occasions to confirm his current address but failed to do so. He was told that it was a legal requirement, in terms of section 13 of the Criminal Procedure (Scotland) Act 1995 that he was obliged to provide his details, including his address and failure to do so would result in him being arrested for committing an offence under that legislation.

[75] No evidence was led to suggest that at any time the officers attempted to verify that the pursuer's address, as displayed on his licence, was correct. There was no direct evidence led as to the process that could have been followed by the officers to verify the address or whether the officers would or would not have been successful in establishing whether the address on the licence was the pursuer's current address. It was not put to them that such checks could have been made and clarified then and there. Further, the lawfulness of the arrest in terms of Section 1(2) of the Criminal Justice (Scotland) Act 1986 was not explored i.e. whether a warrant ought to have been obtained prior to effecting an arrest. However, neither of these matters were put in issue in the pleadings and it is not the function of this court to consider a basis of claim which might have existed if it had been pled and evidence led.

[76] The pursuer gave evidence that no warnings were given that he was going to be arrested for failing to comply with section 13 of the 1995 Act. I reject his evidence on that and am satisfied the officers made it clear, repeatedly, that if he did not comply, he would be arrested. Both first and second defenders had testified to the pursuer driving a vehicle without a valid MOT and failing to comply with Section 13. Both spoke to his threat to leave

and then moving his car key towards the ignition. They were spending far more time on a routine road traffic stop than would normally be the case given the attitude and lack of cooperation of the pursuer. The first defender testified that they were going round in circles. A decision to arrest was therefore made and I proceed on the basis that the arrest was lawful and justifiable in these circumstances.

[77] The pursuer's attitude was clearly frustrating the officers. The second defender is seen on the dash-cam footage gesticulating with his fist and smiling. He accepted in his evidence that this was borne out of frustration caused by the pursuer's refusal to accept the fixed penalty and his challenge of authority.

[78] Some of the dash-cam footage is missing. The clips which are available are each approximately 3 minutes long and there appear to be 3 minute gaps of missing footage between each clip. The pursuer suggested to the officers that the fact that footage was missing was suggestive of a cover-up of some description. It is clear from the evidence that the first and second defenders did not have control over what happened to the dash-cam footage once it was handed over in the police station and the evidence presented does not give this court any basis for drawing any adverse inference as to why sections of the footage are not available.

[79] I am satisfied that the first and second defenders made the pursuer aware that he was liable to arrest if he did not confirm his current address. They moved round to the driver's side of the vehicle to effect the arrest. Before arresting him, they continued to give the pursuer opportunities to comply by providing his current address. The pursuer continued to refuse to provide the necessary confirmation. Throughout the incident, up to this point, the pursuer remained seated in the driver's seat of his car. Based on comments made by the pursuer threatening to leave, and the fact he moved his car key towards the

ignition, the officers formed the view that he was going to make off. Had he done so, they would have been unable to pass a report to the procurator fiscal containing the pursuer's address which would have hindered the ability of the Crown to prosecute the pursuer, due to not knowing where to send any complaint and citation.

[80] Up to this point, no force had been deployed by the officers. It is convenient to break down the subsequent events into 5 stages and consider the trigger and response test in relation to each:

Stage 1: The pursuer's arrest and removal from his vehicle.

- a. Trigger factors: The events leading up to the arrest, and in particular:
 - i. the offer and refusal of a fixed penalty notice,
 - ii. the repeated failures on the pursuer's part to fully comply with Section 13 of the 1995 Act,
 - iii. the pursuer's stated intention to leave the scene and move his car key towards the ignition;
 - iv. his refusal to exit his vehicle upon being told he was under arrest
 - v. the fact the officers' safety was compromised as they required to stand on the driver's side of the pursuer's vehicle adjacent to a live flow of traffic to effect the arrest
 - vi. neither officer had previously encountered the pursuer -they were treating him as unpredictable and did not know how he would conduct himself once he was removed from his vehicle,

outline the state of honest belief held by the first and second defenders at the time they decide to use force to extricate the pursuer from his vehicle.

- b. Response: The force used involved both officers opening the driver's door and pulling him out of the vehicle. The pursuer maintained that he was arrested because he told the officers that he was making a complaint about them. That is, in my view, an untenable position. I accept that he had been told on multiple occasions in advance of the arrest being affected that he would be arrested if he continued to fail to confirm his current address. Some of those warnings were given when the officers were on the passenger side of the pursuer's vehicle, prior to him attempting to telephone to make a compliant. My objective assessment is that the level of force used to remove the pursuer from his vehicle was reasonable having regard to the trigger factors.

Stage 2: The transfer of the pursuer from the side of his vehicle to the front of the police vehicle

- a. Trigger Factors: The factors which applied in relation to the removal from the vehicle continued to apply during this stage of the incident. Additional trigger factors which arose at this point were:
- i. having been removed from his vehicle, the pursuer was now adjacent to a live lane of traffic. The officers proceeded on the basis that it was important for the safety of all concerned to achieve control of the pursuer, given his unpredictable and, thus far, uncooperative nature.
 - ii. the pursuer was wearing a baseball cap which posed a potential safety risk if he was to be placed on the ground.

Those factors, taken together, reflected the honest belief held by the first and second defenders in deciding to use force when moving the pursuer to the front of the police vehicle.

- b. Response: It took seconds for the pursuer to be moved from the side of his vehicle to the front of the police vehicle. The force used included applying a handcuff to one of the pursuer's wrists together with a "hands on" approach to direct the pursuer to the front of the police vehicle, by pushing him in that direction. The pursuer contended that the officers dragged him along the ground. That is not borne out by the dash-cam footage which shows the officers behind him and the pursuer remaining on his feet throughout. The first defender, just before they reached the front of the police vehicle, removed the pursuer's baseball cap from his head to minimise risk of injury when the pursuer was on the ground. This suggests that at that point it was clear to the first defender that the pursuer was going to be put on the ground.

[81] According to the second defender, one handcuff was initially applied to one of the pursuer's wrists to achieve a degree of control whilst they were adjacent to the lane of traffic. It was recorded in his statement, prepared shortly after the incident, that handcuffs were initially applied to the front and then changed to the rear. He accepted that he was wrong about that and the handcuffs had not been applied to the front, only to the rear. The first defender's recollection was that he thought the handcuffs were first applied to the front but when the pursuer was placed over the bonnet of the police vehicle the cuffs were applied to the rear. Whilst it is difficult to be clear from dash-cam footage, due to the angle of the camera not picking up what was happening on the offside of the pursuer's vehicle, it appears from that footage, as he and the officers come into shot close to the front of the police vehicle, that the pursuer's hands were placed behind his back. The footage does not

show the pursuer resisting arrest. Nor does it show him leaning or being forced to lean forward over the bonnet as the handcuffing process was completed although that probably happened out of shot. The discrepancy in relation to how and when the pursuer was handcuffed raises some doubts about the reliability of the first and second defenders' evidence on when handcuffing took place. They both seemed to think it was firstly done to the front and indeed the reference made to the second defender's statement suggests a contemporaneous recording of that position, yet the dash-cam footage does not bear that out. The fact of the matter is the pursuer was handcuffed to the rear. The process started after the officers removed the pursuer from his vehicle and it is likely that it was completed when he was bent over the bonnet of the police vehicle. Notwithstanding the discrepancy in evidence, I am of the opinion, having regard to the trigger factors which prevailed at the time, it was reasonable for the officers to deploy the level of force which they did during this stage.

Stage 3: The events after arriving at the front of the police vehicle resulting in the pursuer ending up on the ground.

- a. Trigger Factors: the initial factors justifying force in the removal of the pursuer from his vehicle were largely superseded when the pursuer was in handcuffs. The factor which applied in stages 1 and 2 which continued to have relevance in stage 3 was the need to maintain control over the pursuer for safety reasons based on his unpredictable and uncooperative nature. By the time the officers had the pursuer handcuffed to the rear, he was effectively under their control, leaning over the front of their vehicle. The first defender stated that the pursuer was not under full control at this point. To achieve full control he considered that they required to move him

further over to the kerbside and place him on his side on the ground to wait for the arrival of the police van. I consider that the officers had an honestly held belief that the continued use of handcuffs was necessary for control, and safety purposes. They also believed (erroneously for the reasons outlined below) that it was necessary to control the pursuer by placing him on the ground.

- b. Response: The pursuer contended that he was slammed onto the police vehicle bonnet, handcuffed and pulled off to the kerbside where both officers let go of his arms resulting in him falling 5 feet and landing head first on the ground. As a result, he said he sustained lacerations to his forehead as well as swelling and bruising to his head, severe bruising to his wrists and a sore neck. He had since suffered long term mental trauma, post traumatic headaches and a stinging sensation. He contended this lasted for months following the incident. He also stated he had lost earnings as a result although there was nothing admitted into evidence regarding wage loss nor indeed mental health trauma. The evidence led by the pursuer, to supplement his oral testimony, relevant to the events which took place at this stage, included:

- i. the audio clips, recorded on the day of the incident, of calls or attempted calls to and from the police control room, at the time of, and subsequent to, his arrest;
- ii. documentation on
 - a. control, restraint and searches,
 - b. police policy considerations,
 - c. training material on police handcuffing recovered as part of a Freedom of Information Request and

- d. the National Decision Model (it is within judicial knowledge that this is used by all police officers, nationwide, on a day to day basis, in relation to decision making;
- iii. the pursuer's A&E attendance record; and
- iv. photographs of the pursuer's forehead and wrists.

[82] The only contradictor was the oral testimony of the officers. They both stated that they considered the safest option, and the best way to achieve full control of the pursuer, was to move him to the kerbside and lower him to the ground. They said they did this by taking an arm each and lowering him to the ground, placing him on his side. They decided not to put him in the back of their own vehicle because it was full of their own belongings. When asked about his injuries, they denied any knowledge about how any injuries were sustained, and in the case of the second defender, he said that he could not see any injuries in the photographs of the pursuer's forehead.

[83] When he was forcibly removed from his vehicle, the pursuer was still waiting for the police control room to answer his call. As he was forcibly removed, he dropped his mobile phone on the ground. The call to the police was still recording. It was answered by a male in the police control room when both the phone and the pursuer were on the ground. The pursuer contended that he could be heard repeatedly stating "You've just hit my head on the ground". Having listened to this clip on several occasions, both at the time it was played in court and subsequently, I cannot make out what was being said by the pursuer. The background noises are muffled and inaudible. However, after being returned to his vehicle after his attendance at the police station, during the call when the police control operator telephoned him back, his allegations as to what happened about being dropped to the

ground are clear. The pursuer sounded irate during the call and was making it clear he wanted the control room caller to ensure the dash cam footage is preserved.

[84] The documentation on police policies and training, spoken to by the pursuer, can be summarised as follows:

a. **Control Restraint and Searches** First published 23 October 2013, updated on 5 July

2023 (which post-dates the incident by 2 years but no challenge was taken to the

sections which the pursuer read to suggest that they did not apply at the time of the incident) -

- “1. Officers must be aware of the potential risks to the suspect or detainee when using control and restraint techniques and should be guided by the national decision model at all times. Officers should use all available information to assess the threat and risks of the situation. They should consider what legal powers or policy they may use and be guided by the Code of Ethics. When identifying options and contingencies, officers are required to apply their training, experience and skill to resolve a situation. They should consider the immediacy of the threat, necessity of their actions, proportionality and the potential community impact. All actions should be subject to continuous review and must be appropriately recorded. Lessons should be learned where appropriate.
2. Detainees experiencing the effects of alcohol, drugs, a mental health condition or a medical condition are particularly vulnerable to the impact of being restrained..
3. With specific reference to restraint and drug use, restraint is significantly more likely to be used in a drug related arrest than during a non-drug related case.
4. People restrained in the prone position should be placed on their side or in a sitting, kneeling or standing position as soon as practicable.
5. The arresting/escorting officer must inform the custody officer immediately if any force has been used during the arrest and/or escort of the detainee. Officers must make a record of any force used on any person who has been arrested ... for management information. The supervisor of the arresting officer should compile a narrative report for the senior management team if
 - i. the force used resulted in injury to a detainee that requires subsequent significant medical attention, for example hospital attendance

- ii. the force resulted in any injury that amounts to at least actual bodily harm under section 47 of the Offences Against the Person Act 1861
- iii. there were any other significant features of the arrest and decision making that would be of management interest, in particular where it may be damaging to the reputation of the service or likely to attract high media interest."

b. Policy Considerations First published 27 October 2023, updated 20 December 2023

(which post-dates the incident by 2 ½ years but no challenge was taken to suggest

the section which the pursuer read did not apply at the time of the incident)–

"Police have a duty of care in the specific situations where

- i. a person is detained and taken into police detention or custody..."

c. Police response to Freedom of Information Request dated 7.10.20 (pre-dates the

incident by 8 months) –

"The relevant section below is taken from the Personal Safety Manual (Handcuffing module) with wording from ACPO and specifically relates to your request:

Any intentional application of force to the person of another is an assault. The use of handcuffs amounts to such an assault and is unlawful unless it can be justified. Justification is achieved through establishing not only a legal right to use handcuffs, but also good objective grounds for doing so in order to show that what the officer did was a reasonable, necessary and proportionate use of force."

d. National Decision Model – first published 23 October 2013, updated 24 January

2024. Therefore, the version produced post-dates the incident by 5 years but there

was no suggestion that it did not accord with practice at the time):

"Options – identifying options and contingencies

This stage involves considering the different ways in which a particular decision can be made (or situation resolved) with the lowest risk of harm.

You may need to consider:

- What options are available
- Immediacy of any threat
- Limits of information to hand
- Amount of time available

- Available resources and support
- Your own knowledge, experience and skills
- Impact of potential action on the situation and the public
- What action to take if things do not happen as anticipated

If you have to account for your actions, will you be able to say it was:

- Proportionate, legitimate, necessary and ethical?
- Reasonable in the circumstances facing them at the time?"

[85] The NHS Lothian Emergency Discharge Summary from Edinburgh Royal Infirmary

where the pursuer attended later the same night contains the following relevant information:

"Impression / Differential Diagnosis: Skull: Closed Head Injury GCS (Glasgow Coma Scale) 14 or 15 on admission.

Clinical Notes: PC (presenting complaint) – Head Injury, ? assault

HxPC (history of presenting complaint): At approx.. 20.00 this evening reports to have been stopped by police due to out of date MOT. Then reports he was forcibly removed from his car for not complying. Reports he was restrained with arms behind his back, forced forward onto car bonnet, hitting left side of head on bonnet. [The pursuer stated in his evidence that is not correct and he did not hit the left side of his head on the bonnet]. Then reports he was forced to the floor, hitting the left side of his head on the ground (covered with gravel).

No LOC (loss of consciousness, N&V (nausea and vomiting), amnesia, severe headache.

Sore neck on lateral movement. No paraesthesia/numbness/weakness in body.

Describes a ?weakness in left temple to left eye

Anxious to bring court case against police.

O/E (on examination):

Alert GCS 15, appears anxious. Grazing to left temple, no laceration, no obvious swelling. Circumferential bruise to forearm. Grazing to left and right hands [again, the pursuer disputed the accuracy of that]."

Otherwise the examination was unremarkable and showed no further injuries at the time.

"IMP (impression): Low impact head injury, no concern for brain injury or intracranial bleed. No suspicion for C-spine injury."

The pursuer was discharged with head and muscular neck injury advice.

[86] There are two aspects to be considered in relation to this stage of the incident:

1. Was it a reasonable use of force for the pursuer to be put on the ground, handcuffed to the rear, given the prevailing trigger factors and
2. Separately, was that done in the way described by the pursuer or in the way described by the first and second defenders, and, whichever manner was deployed, was the level of force used reasonable?

[87] When looked at objectively, I am of the opinion that the decision to put the pursuer to ground was not reasonable. The decision making did not accord with the policy considerations on the use of reasonable force outlined above or the National Decision Model (NDM). It is debateable whether any consideration of the NDM was given by the officers – there was certainly no evidence led to suggest the various criteria were considered at the point of putting the pursuer to ground. If it had been applied fully it ought to have led to a different decision, one which did not result in the pursuer being put to ground. Applying the evidence as a whole to the NDM decision making process, the options which I consider to have been available to the first and second defenders during stage 3 were:

- 1) put the pursuer to ground to achieve full control of him;
- 2) keep the pursuer on his feet. This was discounted as the officers wanted to prevent any possibility of the pursuer kicking out, despite him having exhibited no violent tendencies at any stage.
- 3) clear their belongings from the back of their own vehicle and put the pursuer in that vehicle. No reasonable explanation was put forward as to why this option was not adopted. The officers could easily have maintained the necessary level

of control if they had placed him in the rear of their own vehicle whilst they waited for the police van to arrive a few minutes later, if indeed it was necessary to call for a separate vehicle to take him to the police station which was situated less than 5 minutes away. Why they were cluttering the back of their car with personal belongings is not clear. It is reasonable to infer that the rear seats of a police vehicle should be available for arrested person when it is necessary to convey them to a police station. There was no suggestion that the rear seats could not have been cleared by placing the contents in the boot.

[88] Putting the pursuer to ground was not the minimum level of force required having regard to the following factors:

- i. Immediacy of any threat – there was no realistic threat that the pursuer would flee or become violent when handcuffed to the rear. He was under a reasonable degree of control;
- ii. Limits of information to hand – whilst the officers did not know anything about the pursuer or his history and whilst he had undoubtedly acted in a way which frustrated them due to his lack of cooperation that in itself is not justification for continued use of force beyond the use of handcuffs;
- iii. Amount of time available – there was no time pressure. The van from Livingston Police Station was less than 5 minutes away so the pursuer would only have been in the back of the officers' vehicle for that length of time. Even less time would have been required to have him in the back of the vehicle if they had simply conveyed the pursuer to the police station in their own vehicle;
- iv. Available resources and support – no additional resources and support were needed in terms of restraining the pursuer and keeping him under control;

- v. Your own knowledge, experience and skills – there is no suggestion that the officers were insufficiently trained or lacked the experience and skills to have correctly assessed the extent of any threat, risk etc. They were not ignorant of Police Scotland’s policies and procedures in relation to the use of force and the duties they owed to the pursuer.
- vi. Impact of potential action on the situation and the public – there was clearly a foreseeable risk of injury to the pursuer if force was deployed to put the pursuer to ground in a manner which did not support him and thereby resulted in him falling.

[89] However, were it not for the allegation that the officers dropped him, causing him to sustain injury, nothing would turn on the decision to put the pursuer to ground *per se*. It was the way that they put him on the ground that is said to cause the injury. It is not disputed that the officers owed the pursuer a duty of care for his safety when in their custody. They were therefore obliged to take reasonable care to avoid him sustaining injury once arrested. The trigger factors justified them retaining control over the pursuer but, objectively, did not justify them acting in a manner which caused him to fall whilst under their control and strike his head off the ground. Whilst there are significant elements of the pursuer’s evidence which are incredible or unreliable, I accept the pursuer’s evidence that the officers failed to support him as he went to ground. His evidence on that matter is corroborated by contemporaneous medical records, objective medical assessment of his injuries, audio clips from the evening of the incident and consideration of the various documents outlining police policy and procedures as outlined above. The first and second defenders simply denied knowledge of any injuries to the pursuer. I do not consider their evidence on this issue to be credible or reliable having regard to the weight of evidence

available to support the pursuer's position. I consider the officers have shown a lack of candour in relation to what happened when the pursuer was being put to ground. In the context of a damages claim, it matters not whether the officers' actions were deliberate or carried out without taking reasonable care.

[90] In all the circumstances I am of the view that the officers' use of force at this stage of the event was unreasonable in dropping the pursuer to the ground.

Stage 4: The pursuer remaining on the ground whilst awaiting the arrival of the police van being driven by PC Arbuthnott

- a. Trigger factors: The officers considered it necessary to keep the pursuer on the ground pending the arrival of the van from Livingston Police Station to maintain "full" control over him.
- b. Response: For the reasons mentioned in relation to stage 3 above, whilst it was their belief that such a course of action was necessary, it was a belief that had no proper basis. It led to an unreasonable continued use of force to the extent of controlling the pursuer on the ground. There was conflicting evidence as to whether any force was applied by the officers when the pursuer was lying on the ground and how he was positioned. The pursuer stated the officers crushed his back. The first defender did not recall any ongoing contact with the pursuer on the ground. The second defender thought there would have been, but could not recall if it was he or the first defender who maintained that contact.

[91] On the balance of probabilities, at least one of the officers maintained contact with the pursuer. The evidence does not enable me to determine which one but more

importantly there is no medical evidence to support the contention that the pursuer sustained any crush injury to his back or anywhere else.

[92] The pursuer did not speak directly to his position on the ground. The first and second defenders spoke to the pursuer being positioned on his side. PC Arbuthnott was clear that the pursuer was in the prone position. He was independent of the incident and given my concerns over the lack of candour from the first and second defenders in relation to stage 3, I prefer his evidence. However, there was no evidence to suggest that the pursuer's position had any causal effects i.e. no injury was sustained merely because he was lying on the ground, whether prone or on his side.

Stage 5: The transfer to and arrival at Livingston Police station.

- a. Trigger Factors: The officers honestly believed, due to the need to maintain control over the pursuer, that handcuffs remained necessary.
- b. Response: The only force applied at this time was to stand the pursuer up, whilst still handcuffed to the rear, and place him in the back of PC Arbutnott's police van.

There is no suggestion of any further injury having been sustained in this period.

[93] Based on the foregoing analysis, I conclude that the first and second defenders have breached the duty of care owed to the pursuer by using unreasonable force in allowing him to fall to the ground and sustain injury. The third defender is vicariously liable for the conduct of the first and second defenders.

Ex Turpi Causa

[94] All three defenders argue that the maxim *ex turpi causa non oritur actio* (no action arises out of an immoral transaction) should be applied to the case to defeat the pursuer's

claim. The leading Scottish authority which considers the maxim is *Weir v Wyper* 1992 S.L.T. 579 which was unfortunately not cited. *Weir*, and the authorities cited therein, can be taken as authority for the propositions that a) the facts and circumstances of each case have to be looked at in determining whether the maxim should be applied b) where a pursuer was not participating in any significant criminal activity, their right to recover damages should not be denied. In *McLaughlin v Morrison* 2014 S.L.T. 111 it was held there must be a sufficient causal link between the unlawful act and the harm.

[95] The third defender relied on *Beaumont v Ferrer* [2016] EWCA Civ 768 where the court did apply the maxim but that was a case where the crime committed by the claimant was integral to both the claim itself and any negligence on the part of the defendant.

[96] In my opinion, the *ex turpi causa* maxim has no application in the present case. The criminal activity on the part of the pursuer was minor. It could never reasonably be categorised as significant and it was not integral to the negligence on the part of the defenders' use of unreasonable force. There is a clear break in the chain of causation between the pursuer being arrested and him being allowed to fall to the ground and sustain injury.

Contributory negligence

[97] All defenders argue that the pursuer failed to take reasonable care for his own safety. They base their arguments on the pursuer's conduct prior to being arrested i.e. prior to any force being used when he was acting in an uncooperative and belligerent manner, failing to confirm his personal details in terms of section 13 of the 1995 Act, and refusing to exit his vehicle whilst under arrest. As is clear from the decision on the merits, I do not consider that the officers acted negligently until the stage of putting the pursuer to ground.

[98] *Davies v Swan Motor Company* [1949] 2 K.B 291 at page 326 is authority for the proposition that contributory negligence should be considered in the context of i. blameworthiness and ii. causative potency.

[99] In the present case, there is no doubt the pursuer had committed minor criminal offences prior to his arrest. There is no doubt he was refusing to cooperate with the officers and they were entitled to forcibly remove him from his vehicle. No injury was sustained at that point. As stated, the dash-cam footage does not suggest that the pursuer continued to struggle and he appears relatively compliant as he was taken to the front of the police vehicle. By the time the first and second defenders acted negligently, the pursuer was fully handcuffed to the rear and was entirely dependent on them to protect him from harm when he ended up on the ground.

[100] The pursuer at that point cannot be criticised or blamed for what then happened. The events prior to his arrest, in terms of the pursuer's behaviour, cannot be said to be in any way causally linked to events after he was handcuffed from behind. Taking the defenders' argument to its logical conclusion, it would mean that an arrested person, who is handcuffed from behind and is under the control of police officers, who has not shown any signs of violence but has managed to verbally annoy and frustrate police officers, should have their damages award reduced to reflect behaviour which is divorced from the defenders' subsequent negligence. As a matter of law that cannot be correct. In my opinion, there is no valid argument for a finding of contributory negligence in this case.

Quantum

[101] The onus is on the pursuer to prove, on the balance of probabilities, what losses he has sustained as a result of the defenders' breach of duty. The heads of claim which can be

deduced from the pleadings relate solely to solatium. The pleadings refer generally to physical, emotional and psychological damage including anxiety and physical pain, severe post-traumatic stress and headaches for 6 months.

[102] Passing reference was made by the pursuer when giving evidence to having sustained a loss of earnings but no quantum evidence was led to substantiate that head of claim. In particular there was no medical evidence to certify how long the pursuer was unfit for work nor any wage slips or financial records to vouch any loss. No award can therefore be made for earnings loss.

[103] The contemporaneous medical records make mention of minor injuries. There was no evidence led from any medical witness to speak to the likely duration of symptoms or confirm that the pursuer had been diagnosed with a recognisable psychiatric disorder.

There was no evidence to confirm the diagnosis of any neurological condition. The only credible and reliable evidence was that recorded in the records from Edinburgh

Royal Infirmary as to the nature of the soft tissue injuries to the pursuer's forehead (grazing) and forearm (bruising). They also record the pursuer complaining of a sore neck on lateral movement. I accept that the head injury would have caused the pursuer some pain and discomfort. It probably cause the grazing evident from the photographs and some headaches. Based on what is recorded, and judicial knowledge and experience of regularly assessing such injuries, it is reasonable to conclude that these injuries would have gradually resolved, to the point of a full recovery, within 4 weeks. To hold that the pursuer was suffering from any injury for longer than that would be speculative and there is no reasonable basis to draw such an inference based on the evidence before the court.

[104] Based on the evidence led, I am unable to conclude that the bruising to arms, evident from the photographs, was caused by the defenders' unreasonable use of force. It is equally likely to be consistent with the lawful use of handcuffs.

[105] Quantification of injuries is not an exact science. It is usually undertaken by reference to the Judicial College Guidelines (17th Edition) and any relevant precedent. Each case is assessed on its own facts. Chapter 14(b) of the JCG relates to minor injuries which result in a complete recovery within 28 days. The range of awards is from £840 to £1680. The award is dependent on the severity and duration of symptoms.

[106] My decision in *Fraser & Anr v Munro* [2024] 7WLUK 747 was cited by the pursuer. It made awards for solatium for soft tissue injuries and reviewed some earlier case law. The second pursuer was awarded £900 plus interest for an injury of 2 weeks duration consisting of neck pain and headaches.

[107] The defenders all submitted valuations of £1,680 plus interest for the pursuer's injuries, based on breaches of duty being established and causing all the injuries, including the wrist injuries. Whilst there is no doubt that there was bruising to the pursuer's forearms I am not of the opinion that it has been established on the balance of probabilities that those injuries were causally linked to any breach of duty on the part of the defenders. In the circumstances, a reasonable sum for solatium in respect of the grazing to the forehead, neck pain and headaches with full resolution within 28 days is £1500.

[108] Interest was not craved by the pursuer but in terms of Section 1A of the Interest on Damages (Scotland) Act 1958 the court shall award interest on any solatium figure unless the court is satisfied that special reasons exist not to make such an award. No special reasons exist there was no argument from the defenders that interest should not be added in the event the court awarded damages to the pursuer. Therefore, in the exercise of my

discretion, I shall award interest at half the judicial rate i.e. 4% from the date of the incident on 11 June 2021 until 24 June 2025 and thereafter at the judicial rate of 8% until payment.

Interest to date amounts to £242.30. I shall therefore pronounce an interlocutor finding the defenders jointly and severally liable to pay to the pursuer the sum of £1742.30 plus interest at the rate of 8% per annum from today's date until payment.

Expenses

[109] The pursuer has not craved an award of expenses and was clear in his submissions that he was not looking for any award of expenses. The defenders stated in their submissions that they sought to dis-apply the rules on Qualified One Way Cost Shifting (QOCS) under Section 8(4)(a), (b) and (c) of the Civil Litigation (Expenses and Group Proceedings)(Scotland) Act 2018, alleging that a fraudulent claim has been made, that the pursuer's conduct has been manifestly unreasonable and he has been guilty of an abuse of process. Submissions are not the place to seek to dis-apply the QOCS rules. That requires a written motion in terms of OCR 31A.4(1)(a). It does not necessarily follow that just because the pursuer has been successful with his claim that the defenders are barred from seeking to dis-apply the QOCS rules and argue for an award of expenses for all or part of the expenses of process. It is not clear whether that will be a course they wish to follow notwithstanding the pursuer is being awarded damages. I will therefore reserve the question of expenses and the defenders can consider their position in that regard. If the defenders decide not to enrol a motion to dis-apply the QOCS rules they are requested to inform the sheriff clerk so a final interlocutor can be issued making a finding of no expenses due to or by any party. Otherwise the appropriate motion should be enrolled and a hearing assigned.

Post Script:

[110] One further issue is worthy of comment in this case.

[111] The pursuer gave evidence but called no other witnesses. He concluded his case on the first day of the proof. The first defender commenced his evidence on day 1, which was concluded on day 2, followed by PC Arbuthnott, the officer who came to the scene to collect the pursuer and convey him to the police station. At the conclusion of the second day, I discussed with parties how best to present submissions. It was agreed that following the conclusion of all evidence, draft written submissions would be exchanged between parties within 7 days and final versions lodged within a further 7 days. An oral hearing would only be required if any specific point arose from the written submissions which I required to be addressed on. The proof was adjourned until 6 May 2025 when the second defender gave his evidence.

[112] On 23 April 2025 the pursuer enrolled a motion seeking to vary the timetable to allow him to lodge a late inventory of productions containing 1) an outpatient clinic letter relating to the pursuer's attendance at a neurology appointment with Dr Richard Davenport, consultant neurologist, on 19 July 2021 (the letter was addressed to the pursuer's GP at East Calder Medical Practice) and 2) a letter from Dr Davenport to the pursuer dated 3 April 2025.

[113] The motion to vary was opposed and a hearing on the motion was arranged for 2 May 2025. The motion was refused on the basis that the pursuer had closed his case at proof and when the proof was to resume on 6 May the defence would lead their last witness. I therefore pointed out that there would be no witness who the pursuer could call at this stage to speak to the documents. It had been explained to the pursuer on several occasions during the first 2 days of proof that a production does not become evidence (and cannot be

considered by the court) unless a witness gives evidence to speak to it's terms or the terms of the production are agreed in a joint minute. There was no joint minute of agreement relating to these late productions. The defenders and third party confirmed their opposition to the pursuer's motion on the foregoing basis. The motion, in those circumstances, had to be refused.

[114] On 6 May 2025, when the case called for the third day of proof, the pursuer made a verbal motion seeking leave to appeal the decision of 2 May to refuse to vary the timetable. Permission was refused. The motion had not been made immediately following the decision on 2 May in terms of Ordinary Cause Rule 29.19 but in any event I was of the view that there were no reasonable prospects of success with an appeal to the Sheriff Appeal Court, there was no error in law for them to consider and there was no other compelling reason why leave should be granted.