Neutral Citation Number: [2025] EWHC 151 (KB)

Case No: KA-2023-000063

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/01/2025

Before :

MR JUSTICE SWEETING

- -

Between :

IAN SLEEPER	**Appellant**
- and -	
COMMISSIONER OF POLICE OF THE METROPOLIS	**Respondent**

- -
- -

BRUNO QUINTAVALLE (instructed by **SLATER AND GORDON LAWYERS**) for the **APPELLANT**
ROBERT TALALAY (instructed by **Clyde & Co LLP**) for the **RESPONDENT**

Hearing dates: 8th-9th May 2024

- -

Approved Judgment

This judgment was handed down remotely at 10:00am on 28th January 2025 by circulation to the parties or their representatives by email and by release to the National Archives

MR JUSTICE SWEETING :

Introduction and Factual Background of the Case

1. The Appellant, Ian Sleeper ("the Appellant" or "Mr. Sleeper"), is a 56-year-old man who was arrested and detained on 23 June 2017 while engaging in street evangelism or proselytising outside Southwark Cathedral in London. Mr. Sleeper had two signs with him. The first read "LOVE MUSLIMS BAN ISLAM THE RELIGION OF TERROR!", and the second read "#LOVE MUSLIMS HATE ISLAM JESUS IS LOVE + HOPE". The signs were handwritten and contained large writing that was easy to read. They were prominently displayed, with one sign, the "Hate" sign, being held up by the Appellant and the other, the "Ban" sign, placed on the floor next to him, facing the road where members of the public were walking past.
2. PC Blair and PC Terry were on patrol in Borough Market. PC Blair was an experienced counter-terrorism officer. They were directed to Mr. Sleeper by a member of the public who found the signs, particularly the one containing the word "hate Islam", to be distressing. PC Hussey, another experienced counter-terrorism officer, came to assist.
3. The officers engaged the Appellant in a lengthy conversation, recorded on PC Blair's body-worn camera, attempting to persuade him to stop displaying the signs. Mr. Sleeper maintained that his actions were protected under the Human Rights Act 1988.
4. At 12:50 pm, after establishing that he could not seize the signs, PC Blair arrested the Appellant for a religiously aggravated offence under s.5 of the Public Order Act 1986 ("POA"). He was taken to Walworth Police Station. His detention was authorised at 1:27 pm. At 3:20 pm, Mr. Sleeper was seen by a medical practitioner. Mr. Sleeper's chosen solicitor arrived at 7:24 pm, having been contacted at 3:18 pm. He was interviewed at 8:13 pm. Mr. Sleeper gave a prepared statement in which he explained that he was criticising Islam and not Muslims. He returned to his cell at 9:16 pm. Between 9:16 pm and his release, police officers attempted to reach senior officers and the Crown Prosecution Service to determine whether to charge the Appellant but were unsuccessful. Mr. Sleeper was detained in custody until 12:38 am, when he was released on conditional bail. On 11 August 2017 he was informed of the Crown Prosecution Service's decision not to prosecute.
5. The incident which led to his arrest took place just a few weeks after two major terrorist attacks in London: the London Bridge and Borough Market attack on 3 June 2017 (in which eight people had been murdered), and the Finsbury Park attack on 19 June 2017 (in which a van had been driven into a crowd of worshippers at a mosque). The city was experiencing heightened tensions, and the police were, for good reason, particularly sensitive to anything that could be perceived as inciting hatred or violence. The Cathedral, near the site of the Borough Market attack and close to where the Appellant was displaying his signs, was due to host a multi-faith community service on the day of the Appellant's arrest. The Appellant was aware of this and had chosen to proselytise close to the Cathedral with this in mind.
6. The Appellant subsequently brought a claim against the Commissioner of Police of the Metropolis for false imprisonment and breach of his human rights, arguing that his arrest and detention were unlawful and violated his rights to freedom of religion, expression, and assembly. The claim was dismissed by HHJ Saggerson at the Central London County Court. He found, for the reasons set out in a detailed written judgment dated 3 April 2023, that the arrest and detention were lawful. In summary, the Judge decided that the arresting officer had a reasonable suspicion that the Appellant had committed an offence and that his belief that arrest was necessary was objectively

reasonable. The Judge also found that the Appellant's claims under the Human Rights Act 1998 (HRA) were time-barred.

7. Contrary to the conclusions reached by the trial Judge, the Appellant contends that his arrest and detention were unlawful.

The Trial

8. Mr. Sleeper gave oral evidence at trial. The Judge noted in his judgment that he was a man of good character. PC Blair, PC Terry, and PC Hussey gave oral evidence. Witness statements were taken as read from Roger Alsop (a friend of the Appellant) and PS Carmichael, whose statement was treated as hearsay because he was unavailable. Each police officer was cross-examined by Mr. Daniels, the Appellant's trial counsel. The Judge looked at the body-worn camera footage ("several times"), the transcript of the footage, the police "Evidence and Actions Books", and the Appellant's written statement.
9. The Judge accepted the Appellant's evidence that he was holding the "Hate" placard, and that the "Ban" placard was placed on the ground throughout (although it could still be read). He determined that the Appellant genuinely held the beliefs he expressed. He rejected the Appellant's claim that he only intended to start a debate, finding that he meant to convey the message on the "Ban" placard literally. The Judge found that the Appellant (as he accepted) deliberately chose the location at which he was displaying the signs to maximise the impact of his message.
10. The Judge found that PC Blair had objective and reasonable grounds for suspecting that the Appellant had committed a racially aggravated section 5 POA offence and considered the hate placard to be abusive and targeted at practitioners of Islamic religious ideology. The Judge drew attention to the fact that the Appellant was deliberately standing near the scene of recent terrorist atrocities which were believed to be perpetrated by those professing a distorted version of Islamic ideology. He determined that the message "Hate Islam" on the placard was exhorting and inciteful and would likely be interpreted as such by reasonable members of the public. He found that there were those in the vicinity who were alarmed or distressed by the signs. He accepted PC Blair's evidence that even he, PC Blair, was alarmed and that his "fear was that in the community the repercussions could have been awful for a lot of people" and that his honest assessment from his long counter terrorist experience was that "people may take umbrage and have been violent for a lot less".
11. The Judge held that Article 9 ECHR, relating to freedom of thought, conscience and religion, was not engaged. He reasoned that the Appellant's call to "Hate Islam" on the placard was not inherently connected to his Christian beliefs, and therefore did not represent a genuine manifestation of his religious beliefs. He considered that the expression was an unnecessary addition reflecting a supplementary opinion and that the point that the Appellant said he was trying to make could have been conveyed using different wording.
12. The Judge rejected the Appellant's argument that saying "Love Muslims" mitigated any abusive meaning that might otherwise attach to the words "Hate Islam". He did not accept that it was no different in kind from the expression of a sentiment such as "loving the sinner but hating the sin". He found the suggested distinction to be facile in its context, concluding that the Appellant was in fact inciting hatred toward Muslims as a whole. He considered that the message "Hate Islam", positioned prominently between "Love Muslims" and the smaller phrase "Jesus is love + hope", overshadowed any attempt to differentiate between the religion and its adherents.

13. He rejected the Appellant's assertion that he did not consider his individuality to be rooted in his religion. He regarded the distinction the Appellant sought to draw between himself as an individual and his identity as a Christian as essentially disingenuous because the Appellant was aware that, absent such a professed distinction, it would inevitably be suggested to him by parity of reasoning that exhorting hatred of Christianity would be an invitation to hate him as an individual.
14. The Judge found that the Appellant's ECHR rights, under Articles 10 and 11, were engaged and that the police officers were aware of them. However, he accepted the Respondent's submission that these rights were only relevant in determining whether it was reasonable for PC Blair to suspect that the words on the placard were not protected speech or in the circumstances in which they were displayed amounted to an offence such that it was necessary to arrest. He concluded that, since PC Blair's suspicion was reasonably founded, taking into account the scope of free expression allowed under both domestic and ECHR law, and that since the arrest was necessary, the Appellant's ECHR rights, although engaged, played no further part.
15. In relation to PC Blair's awareness and consideration of the Appellant's rights he concluded:

> "I am satisfied that any fair assessment of PC Blair's evidence is that in reaching all the decisions he did regarding his suspicions and the necessity for an arrest he took a holistic view of all the considerations required of him under the POA and the HRA in the context of the facts he was facing on the ground. Whether under the POA or the HRA PC Blair adopted a delicate balancing exercise trying to reflect the provisions of both the POA and the various rights (including e.g. Article 10) under the HRA. This is not a 'posthumous' reinvention of what happened. The very nature and content of the extended conversation between PC Blair and the Claimant (if one reasonably takes references to Article 11 as a trigger) reveals that at every stage PC Blair had the Claimant's Common Law, statutory and Convention rights in mind. His long but unsuccessful efforts to fashion a less intrusive outcome, short of arrest by taking away the Hate sign and securing reassurance about future conduct from the Claimant also illustrate that in every practical sense that matters (whether he needed to or not) he was considering the proportionality of his actions."

16. In other words, having heard extensive evidence the Judge made findings of fact that the police officer had all of the Appellant's relevant rights well in mind, including the need for proportionality and consideration of measures short of arrest, in deciding that it was necessary to arrest him.
17. The Judge held that a separate proportionality assessment beyond the statutory test in section 24 of the Police and Criminal Evidence Act 1984 (PACE) was not necessary for the common law tort of false imprisonment. However, he did consider proportionality and found that the restrictions imposed on the Appellant were proportionate to the legitimate aim of preventing religiously aggravated abuse likely to cause alarm and distress. He concluded that the Appellant's signs did not contribute to open public debate and that less intrusive measures had in fact properly been considered.

18. As to detention, the Judge found that several factors contributed to the period of almost 12 hours before the Appellant was released from custody including the fact that he had to be seen by a medical practitioner because of a medical condition; that he waited for his chosen solicitor to arrive and that the station officers spent time communicating with senior officers and the Crown Prosecution Service to reach a charging decision. The Judge found that the period of detention was reasonable and proportionate in the circumstances, reflecting the minimum time reasonably required.

Grounds of Appeal

19. The Appellant has permission to appeal on five grounds. The Appellant clarified that there is no extant claim made under s.7 HRA, the Judge having found that the Human Rights Act claims were brought out of time. The appeal concerns the lawfulness of the arrest and the common law tort of false imprisonment; nevertheless, the Appellant argues that his ECHR rights were engaged at all material times, and that the Judge erred primarily because of the way he approached the test for arrest in light of those rights. The grounds of appeal in summary are:
20. Ground 1: The Appellant argues that the Judge erred in finding that it was reasonable for PC Blair to suspect that the sign was "abusive." This ground of appeal is broken down into several sub-arguments:
    i. Ground 1(i): The Judge failed to objectively consider whether the sign, bearing the words "HATE ISLAM", was actually abusive. The Appellant contends that the Judge should have determined whether a reasonable person would find the sign objectively abusive, rather than focusing on whether the officer's suspicion was reasonable.
    ii. Ground 1(ii): The Appellant argues that the authorities require an "imminent" risk of public disorder to be present to support an offence under s.5 of the Public Order Act 1986 and that the Judge failed to apply this test when assessing the risk of public disorder.
    iii. Ground 1(iii): The Appellant challenges the Judge's reliance on the risk of public disorder as a justification for the arrest where that risk was premised on a violent reaction to the sign which was neither reasonable nor a natural consequence of its display.
21. Ground 2: The Appellant argues that the Judge failed to correctly apply the European Convention on Human Rights ("ECHR"), specifically Articles 9, 10, and 11 (freedom of thought/belief, expression, and assembly), when assessing the lawfulness of the arrest. He contends that the Judge wrongly distinguished between protected and non-protected speech, and did not adequately consider ECHR protections. Section 6 of the Human Rights Act 1998 (HRA), it is argued, places a greater obligation on both the arresting officer and the court to consider whether the Appellant's behaviour was objectively reasonable in light of his ECHR rights, which the Judge failed to do.
22. Ground 3: The Appellant argues that even if a proportionality exercise was not strictly required under common law, the judge still erred in the way he assessed proportionality. This ground also includes specific challenges:
    i. Ground 3(i): The Judge only considered the length of the Appellant's detention and not the fact of the detention itself when assessing proportionality.

ii. Ground 3(ii): The Judge did not adequately consider whether releasing the Appellant on street bail would have been a more proportionate response compared to arrest and detention.
iii. Ground 3(iii): The Judge did not give sufficient weight to the Appellant's right to protest when balancing the various factors relevant to proportionality.

23. Ground 4: The Appellant argues that the Judge erred in rejecting the argument that saying "love Muslims" alongside "hate Islam" meant that the signs were not abusive. The Appellant contends that the judge misunderstood the distinction between criticising a religion and directing hatred towards individuals.
24. Ground 5: The Appellant challenges the Judge's ruling that Article 9 of the ECHR (freedom of thought, conscience, and religion) was not engaged in this case. While acknowledging that this point is somewhat academic because he is not directly appealing the dismissal of the HRA claim, the Appellant maintains that the Judge erred in finding that the signs did not constitute a manifestation of his religious beliefs. He argues that the signs, even if offensive, were still a reflection of deeply held religious convictions.

The Legal Framework – Appeals

25. Under CPR r 52.21(3)(a)-(b) the appeal court will allow an appeal where the decision of the tribunal from whose decision an appeal is brought was 'wrong'. The role of the appeal court is not to retry the case. Under CPR rule 52.21, an appeal is a review of the decision of the lower court. Insofar as an appeal is a challenge to findings of fact an appellate court will be slow to interfere with findings by a trial Judge who has seen and heard the witnesses. Factual findings will only be overturned when the Judge is plainly wrong either because there was no evidence to support a challenged finding of fact, or the trial Judge's finding was one which no reasonable Judge could have reached (see *Grizzly Business v Stena Drilling* [2017] EWCA civ 94 at 39-40 and *Perry v Raleys* [2019] UKSC 5).
26. In *Assicurazioni Generali SpA v Arab Insurance Group* 2002 EWCA Civ 1642 Ward LJ discussed the difficulties of an appeal court reviewing a trial judge's finding of fact, observing: "Bearing these matters in mind, the appeal court conducting a review of the trial Judge's decision will not conclude that the decision was wrong simply because it is not the decision the appeal Judge would have made had he or she been called upon to make it in the court below. Something more is required than personal unease and something less than perversity has to be established. I would pose the test for deciding whether a finding of fact was against the evidence to be whether that finding by the trial Judge exceeded the generous ambit within which reasonable disagreement about the conclusion to be drawn from the evidence is possible."

The Statutory Framework

The Offence

27. Offences relating to public order are now largely set out in statute. Section 5 of the Public Order Act 1986 ("POA") creates a summary offence of using threatening or abusive words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening or abusive within the hearing or sight

of a person likely to be caused harassment, alarm or distress. The offence under section 5 is similar to the more serious offence under section 4A, save as to the required intent.

28. The relevant parts of sections 5 and 6 of the POA (as amended) provide:

> "5(1) A person is guilty of an offence if he—
> (a) uses threatening or abusive words or behaviour, or disorderly behaviour, or
> (b) displays any writing, sign or other visible representation which is threatening or abusive within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. ...
> (3) It is a defence for the accused to prove—
> (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
> (b) [...]
> (c) that his conduct was reasonable.
>
> 6(4) A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening or abusive, or is aware that it may be threatening or abusive or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly."

29. The defence that conduct was "reasonable" must be considered in conjunction with ECHR rights.
30. The Appellant drew attention to section 29J of the POA which provides:

> "Protection of freedom of expression
> 29J. Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system"

31. Section 31 of the Crime and Disorder Act 1998 (as amended) provides that the section 5 POA offence may be aggravated where the person committing the offences shows hostility based on race or religion:

> "31 (1) A person is guilty of an offence under this section if he commits ...
> (c)an offence under section 5 .... which is racially or religiously aggravated..."

32. Section 28 of the same Act defines when an offence is 'racially or religiously aggravated':

> 28(1)(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership ... of a racial or religious group; or (b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

33. The two relevant ingredients for the predicate offence under section 5 of the POA in this case (see above) are therefore that:

(i) The material writing was abusive; and,
(ii) was displayed within the sight of a person likely, as a result, to be caused harassment, alarm or distress.

Arrest

34. Section 24 of the Police and Criminal Evidence Act 1984 ("PACE") sets out the conditions for a lawful arrest which must meet the test of necessity for the specific reasons set out in the section:

> "(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
> (3) If an offence has been committed, a constable may arrest without a warrant—
> …
> (b) anyone whom he has reasonable grounds for suspecting to be guilty of it
> (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
>
> (5) The reasons are—
> (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
> (b) correspondingly as regards the person's address;
> (c) to prevent the person in question—
> (i) causing physical injury to himself or any other person;
> (ii) suffering physical injury;
> (iii) causing loss of or damage to property;
> (iv) committing an offence against public decency (subject to subsection (6)); or
> (v) causing an unlawful obstruction of the highway;
> (d) to protect a child or other vulnerable person from the person in question;
>
> (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
>
> (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question."

Human Rights

35. The European Convention on Human Rights (ECHR), as incorporated into UK law through the Human Rights Act 1998, protects fundamental rights, including the right to freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), and freedom of assembly and association (Article 11).
36. Article 9 provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

37. The right to manifest religion or belief is qualified by Article 9.2:

> "2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

38. Article 10 provides:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority…. "

39. Article 10 rights are also qualified and do not protect all expression in all circumstances. Both written and oral expression may be restricted to preserve public safety or prevent disorder or crime:

> "2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others…"

40. Article 11 provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

41. Again, this right is qualified:

> "2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

The Grounds of Appeal – Discussion and Conclusions

Grounds 1 and 4

Did the Judge fail to properly consider whether the language on the sign was objectively abusive? Did he erroneously restrict himself to deciding whether the officer honestly and genuinely believed the sign to be abusive?

Did the Judge improperly and perversely conclude that the Appellant was motivated by (impermissible) hatred for the practitioners of "Islamic religious ideology" rather than (permissible) hatred for the ideology itself?

42. Ground 1 is concerned with the elements of the section 5 offence and what was required to give rise to a reasonable suspicion on the part of the arresting officer that the offence had been committed. Ground 1(i), which relates to 'objective' reasonableness also draws on the arguments advanced at the hearing and in the written submissions in relation to Ground 4 which concerns the Judge's rejection of the argument that the signs were not abusive because they drew a distinction between Muslims and Islam.
43. The law does not permit arbitrary arrest and detention. An arrest must therefore be based upon an honest suspicion that an offence has been committed, and that suspicion must be a reasonable one in the sense that it is capable of withstanding objective scrutiny of the reasons said to give rise to the suspicion. Further the arrest must itself have been reasonably believed to have been *necessary* on grounds which are now set out by statute in PACE.
44. The general proposition advanced in this ground is that the Judge failed to properly apply the test laid out by the Court of Appeal in *Castorina v The Chief Constable of Surrey [1988] NLJR 180*.
45. *Castorina* concerned the lawfulness of an arrest under section 2(4) of the Criminal Law Act 1967 ("the 1967 Act"), a provision the court viewed as largely equivalent to section 24(6) of the Police and Criminal Evidence Act 1984. The judgment contributed to the development of a threefold test to determine whether an arrest is lawful:
    a) Did the arresting officer suspect that the person arrested was guilty of the offence? This question focuses on the officer's state of mind at the time of the arrest and depends on the court's factual findings. The officer must have a genuine suspicion that the individual is involved in an offence.
    b) Assuming the officer had the necessary suspicion, was there reasonable cause (in the language of the 1967 Act) for that suspicion? This is a purely objective requirement to be determined by the court. It requires that the suspicion is objectively justifiable based on the information available to the officer at the time of the arrest. Reasonable cause goes beyond mere 'honest belief'; it requires evidence to support the officer's suspicion.
    c) Was the decision to arrest "*Wednesbury"* reasonable? That is, in accordance with the principles set out in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 K.B. 223. This aspect, initially a distinct element, has now been modified to take into account later statutory changes (see *Parker v Chief Constable of Essex* [2019] 1 WLR 2238). So, it is necessary to consider whether the officer believed that it was necessary to arrest for any of the reasons mentioned in section 24(5) of PACE on grounds which were objectively reasonable (See *Hayes v Chief Constable of Merseyside* [2012]1 WLR 517).
46. The *Castorina* case highlighted the importance of objectively justifiable suspicion and the need for courts to scrutinise the necessity and proportionality of arrests to ensure

they are not arbitrary or excessive. The case clarified that the officer's subjective 'honest belief' is not enough; the court must find a reasonable basis for the suspicion based on what the arresting officer knew. The Judge in the present case was well aware of the need to do so. He set out the test in *Castorina* in full in his judgment and analysed the arrest by reference to it.

47. The appeal in *Castorina* succeeded because the first instance Judge imposed a more stringent standard for exercising the power of arrest under section 2(4) of the 1967 Act than the legislation required. He used the phrase "prima facie case for suspicion" suggesting a need for more extensive evidence than that capable of giving rise to a "reasonable cause for suspecting" and referred to “the conclusion” that the person arrested was guilty of the offence. The threshold for “suspicion” that an individual has committed an offence is plainly lower than this.
48. In *O’Hara v Chief Constable of the RUC* [1997] AC 286 the police sought to justify an arrest under section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984, which, in relation to an act of terrorism, provided that: "a constable may arrest without warrant a person whom he has reasonable grounds for suspecting...”) Lord Hope at page 298 explained the nature of the test in terms which are of general application to arrest by a police officer:

> “My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances”

49. As Mr. Talalay submitted on behalf of the Respondent the question which the Judge needed to ask in the present case was whether the reasonable person, based on what the

officer knew, would consider that his suspicion, that the sign was abusive and would cause alarm or distress was a reasonable one.

50. As originally enacted section 5(1) of the POA included a reference to "insulting" but, as from the 1st of February 2014, this was removed under the provisions of the Crime and Courts Act 2013. In *Campaign Against Antisemitism v Director of Public Prosecutions v Nazim Hussain Ali* [2019] EWHC 9 (Admin), the Divisional Court observed that the effect of the amendment was that the "balance was shifted by Parliament, in favour of freedom of expression".
51. Mr. Quintavalle, on behalf of the Appellant, referred to the debates and other material in the public domain which had led to that amendment, arguing that it must have been the intention of Parliament to remove a whole category of conduct from the ambit of section 5(1).
52. A number of the earlier authorities to which the Appellant referred were prosecutions which had been based upon the use of "insulting" words. It was suggested that a case such as *Norwood v DPP* [2003] EWHC 1564 (see further below), which bears similarities to the present case, could not have been prosecuted following the amendment of the section.
53. I agree with the obvious point that it is no longer possible to bring a prosecution under section 5 POA on the basis that words are simply 'insulting' but it does not follow that the same words might not also be abusive and that a prosecution could not have been brought on that basis, had the choice of relying on their 'insulting' nature not been available to the prosecutor. I note that the *College of Policing Guidance* issued in relation to the 2013 amendments (to which I was referred) states: "The Director of Public Prosecutions (DPP) also offered assurances that 'insulting' could be safely removed on the grounds that it would not hinder the ability of the Crown Prosecution Service (CPS) to prosecute as the DPP could not identify any past cases where the behaviour leading to a conviction could not be described as 'abusive' as well as 'insulting'".
54. There are no clearly definable categories. The exercise is fact and case specific. As the DPP's observation (above) suggests, many of the cases reported prior to 2013 involve words or conduct that straddled the boundary between 'insulting' and 'abusive' because any distinction was not one that had to be drawn. In *DPP v Humphrey* [2005] EWHC 822, for example, Leveson J (as he then was) considered that the words "You're fucking Islam", directed at an Asian police officer, were "almost undeniably abusive, if not insulting".
55. It cannot be assumed therefore that a case decided prior to the amendment is a guide to what would <u>not</u> now be abusive simply because it was charged as a case involving insulting words or indeed abusive and/or insulting words.
56. Unless the context otherwise requires, words in a statute have to be given their ordinary, natural meaning; this applies to the word "abusive". The question of whether words <u>are</u> "abusive" is a question of fact. The Judge described it correctly as a matter of "fact and degree". The allegedly abusive words themselves are to be given their ordinary English meaning and are to be judged according to the impact which they would have on the reasonable man or woman (following the general rule set out in *Brutus v Cozens* [1972] 2 All ER 1297). The Judge made a factual finding that the words were abusive. He determined that the 'Hate' sign was "a plain exhortation to others to [hate] those who practice Islamic ideology and live by Islamic precepts". He concluded that "[t]he abusive nature of the placard and its attendant risks were [so] obvious".
57. In considering the ordinary meaning of "abusive" as applied to the written word the Judge said: "it includes inflammatory language of an excessive or extreme character or

language reasonably likely to be construed as inflammatory to an excessive or extreme degree. It goes beyond that which is 'merely' offensive, insulting or rude."

58. Mr. Quintavalle described this as a "problematic" "definition" because:
    1) It did not align with the ordinary meaning of the term 'abusive speech' which he suggested would normally mean "cruel or violent".
    2) It was not based on any legal authority.
    3) It illogically categorised insulting speech as a type of abusive speech, although Parliament had made a distinction between the two.
    4) It was inconsistent with other provisions of the POA.
    5) It negated the legislative choice that Parliament made in removing 'insulting' from section 5(1) of the POA and including section 29J, which aimed to protect speech critical of specific religions or beliefs.
59. He argued that the Judge's definition was similar to that used in *Norwood* and that the conviction in that case would not now be possible given the legislative changes. In *Norwood*, the Divisional Court upheld a conviction under section 5 of the POA for displaying a poster that was deemed racially or religiously aggravated. The circumstances were that shortly after the 9/11 attacks, Mr. Norwood, a member of the British National Party, displayed a poster in his home window in a small town in Shropshire. The poster featured the phrases "Islam out of Britain" and "Protect the British People," alongside an image of the Twin Towers ablaze with a prohibition symbol over the Islamic Crescent and Star. A complaint was filed by a member of the public. Mr. Norwood was convicted by the District Judge for displaying material intended to incite racial hatred.
60. The argument that the poster did not attack Muslims as a religious group, but rather criticised the religion of Islam was rejected on appeal [33]:

> "The poster was a public expression of attack on all Muslims in this country, urging all who might read it that followers of the Islamic religion here should be removed from it and warning that their presence here was a threat or a danger to the British people. In my view, it could not, on any reasonable basis be dismissed as merely an intemperate criticism or protest against the tenets of the Muslim religion, as distinct from an unpleasant and insulting attack on its followers generally".

61. The Divisional Court did not set out a definition of the term 'abusive' because the conclusions of the court in relation to the first limb of the section 5 offence were articulated in terms of the insulting nature of the material displayed (since the conviction predated the 2013 amendment). However, it is clear from paragraph 13 of the judgment that the District Judge had found that the poster was "abusive and insulting to Islam and, on its terms and in its symbols, to the followers of that religion." The charge of which the appellant was convicted was of displaying a sign which was 'threatening abusive or insulting' and the submissions made on behalf of the appellant in the case addressed whether the display of the poster fell within any of those terms. For the reasons given above I do not consider that it can be read into the judgment that the conviction in *Norwood* would not have been, or was not, upheld on the basis that the poster was abusive.
62. The word 'inflammatory' appears in the judgment in *Norwood* as part of the evidence of one of the police officers but was not a term used by the court to qualify or define any part of Section 5. It does not appear to me that the Judge in this case intended to provide a 'definition' given that he had observed that the term takes its ordinary meaning and, insofar as he elaborated on that meaning, identified what it 'included'.

Taken as a whole paragraph 40 of his judgment makes the uncontroversial point that "abusive", for the purposes of section 5, needs to be considered in its public order setting as including language that is likely to be inflammatory rather than simply offensive. That reflects the statutory intent underlying the 2013 amendment of the POA rather than deviating from it.

63. The Appellant further argued (Ground 4) that the hate sign, reading "#Love Muslims, Hate Islam, Jesus is Love + Hope", could not be considered abusive because it drew a clear distinction between Muslims, who the Appellant maintained that he loved, and Islam as an ideology, which he hated. This argument was encapsulated in the proposition that it is possible to "hate the sin but love the sinner".
64. As summarised earlier, the Judge found the suggested distinction to be "facile" and rejected the Appellant's evidence as to his motivations. He said [15.3]:

> "To say of some person: "I love you as a person, but hate what you do" might work with an errant relative or friend who has committed a criminal offence and is an easy enough distinction to comprehend, but I am satisfied that such a facile distinction easily breaks down when one protests that Muslims (for example) are loved except when they are behaving like practising Muslims in accordance with their Islamic ideologies, customs and teachings, where a person such as the Claimant asserts that Islam is "hated" as a religion but not Muslims as people. The Claimant, I find, understands the fluidity and difficulties of this uneasy distinction only too well and his carefully contrived placards were deliberately configured to obfuscate..."

65. The Judge concluded, based on the Appellant's conduct and the overall context of the case, that the Appellant intended to incite hatred toward Muslims and not simply criticize an ideology. That conclusion was heavily reliant on the Judge's assessment of the Appellant as a witness during the trial.
66. The Appellant's other sign called for a ban on Islam, describing it as a religion of terror in the immediate aftermath of a terrorist attack. The presence of this sign, alongside the "Love Muslims, Hate Islam" sign, provided ample evidence to support the Judge's conclusion that the Appellant was motivated by a desire to incite hatred against Muslims as a group, and not just express an abstract critique of Islamic ideology. The Appellant was seeking to draw a connection between recent terrorist events and Islam and was calling for the suppression of that faith as a response. The Judge was entitled to conclude on the evidence that clothing the message on the Hate sign in a paradoxical statement did not in the context in which it was being displayed prevent it from falling within the conduct at which section 5 POA is aimed.
67. The Divisional Court in *Abdul v Director of Public Prosecutions* [2011] EWHC 247 (Admin) emphasised the crucial role of context when assessing whether speech constitutes an offence under Section 5 of the Public Order Act 1986. Gross LJ, delivering the leading judgment, stressed that there is no universal test to determine when speech crosses the line from legitimate expression into a threat to public order. Instead, consideration of context, including the specific words used, the manner in which they were spoken or displayed, and the surrounding circumstances, is paramount. The Judge considered all of these factors.
68. The Appellant sought to rely on *Lee v Ashers Baking Company Ltd* [2018] UKSC 49 to support his "hate the sin but love the sinner" argument. In that case a bakery was asked to create a cake with a message supporting gay marriage, to which the proprietors of the bakery business objected on religious grounds, namely their belief that same-sex marriage was inconsistent with biblical teaching (as they understood it) that marriage could only be between a man and a woman. The court found that compelling someone

to express a message with which they disagree infringes their right to freedom of religion and expression. This is different from the present case. The Appellant was not compelled to express a message he disagreed with but was arrested for expressing a message the police considered abusive and which gave rise to the suspicion that an offence had been committed involving a risk of public disorder. The principles set out in the *Ashers* case protect individuals from being forced to express views they do not hold, not from the consequences of expressing their own abusive views.

69. The Judge in this case found that the Appellant's words were likely to be perceived as abusive and to incite public disorder given that he was displaying his sign in Southwark shortly after the London Bridge and Finsbury Park terrorist attacks. The Hate sign was not expressed as a personal view held by the Appellant. Its message was not being argued in a debating chamber or developed in a polemical article. It was set out in headlines and called for those reading to respond by hating Islam just as the other sign called for the banning of that religion. It was not in my view perverse or contrary to the evidence for the Judge to determine that, in this context, exhorting people to "Hate Islam" was likely to be perceived as hateful and abusive, would cause distress and carried with it a risk to public order.
70. The Judge was in my view entitled to reject the argument that the Appellant could "hate the sin but love the sinner" as negating any abusive meaning being attributed to the hate sign. The Judge's decision was based on a careful assessment of the Appellant's motivations, the specific wording on his signs, and the context in which they were displayed.

Did the Judge misdirect himself that an offence under s.5 POA could be committed where there was no imminent risk of public disorder? Did he fail to direct himself that any violent reaction to the Appellant's speech would not have satisfied the "natural consequence" and "reasonableness" requirements for the commission of an offence under s. 5 POA as laid out in *Redmond-Bate v DPP* [1999] EWHC Admin 733?

71. The Case of *Redmond-Bate* involved an appeal by way of case stated from a decision of the Crown Court to uphold a conviction for wilful obstruction of a police officer in the execution of his duty. The appellant and two of her colleagues were preaching on the steps of Wakefield Cathedral. They had not given the police any advance notice of their intention to preach in this location.
72. A crowd of more than 100 people had gathered, some of whom were being hostile towards the appellant and her colleagues. A police officer apprehended a breach of the peace and requested that the appellant and her colleagues cease preaching, but they refused. They argued that they had a right to preach and the police should control the crowd rather than them. The appellant and her colleagues were subsequently arrested and convicted of the offence.
73. On appeal, the court concluded that, on the facts of the case, the police officer did not have reasonable grounds to believe that the appellant was about to cause a breach of the peace, and that the arrest was therefore unlawful.
74. In the present case the Appellant argued that an offence under Section 5 of the Public Order Act 1986 required an *imminent* risk to public order. The Appellant sought to rely on *Foulkes v Chief Constable of Merseyside Police* [1998] EWCA Civ 938 and *Bibby v Chief Constable of Essex* [2000] EWCA Civ 113 to support this proposition.
75. In *Foulkes* , the Court of Appeal allowed the appeal of Mr. Foulkes against his conviction for obstructing a police officer. The case involved a domestic dispute where Mr. Foulkes was locked out of his house by his wife and children after an argument.

When police arrived, they determined that there was a risk of a breach of the peace if Mr. Foulkes was allowed to re-enter the house. They prevented him from doing so, and he was subsequently arrested for obstructing a police officer in the execution of their duty.

76. The Court of Appeal concluded that the police officers' actions in preventing Mr. Foulkes from re-entering his house were not lawful because there was no imminent threat of a breach of the peace emanating from Mr. Foulkes. The Court of Appeal applied the principle set out in *Redmond-Bate* that police are only empowered to take steps to prevent a breach of the peace if "otherwise lawful conduct gives rise to a reasonable apprehension that it will, by interfering with the rights or liberties of others, provoke violence which, though unlawful, would not be entirely unreasonable". Whilst there may have been a general risk of a breach of the peace arising from the family dispute, there was no evidence to suggest that Mr. Foulkes himself posed an imminent threat. The source of the potential breach of the peace was from the other members of the family who had locked him out and the police were not justified in preventing him from entering his own home.
77. The *Bibby* case involved the arrest of a bailiff, Mr. Bibby, who was attempting to execute a warrant of possession. Mr. Bibby was aware that the occupier of the property had a history of violence and had barricaded himself inside. Mr. Bibby and his team attempted to force entry, leading to a confrontation with the occupier. The police arrived and arrested Mr. Bibby, placing him in handcuffs.
78. The Court of Appeal upheld the decision of the lower court, concluding that the arrest of Mr. Bibby was lawful (but the use of handcuffs was not reasonable) because the police had reasonable grounds to suspect that Mr. Bibby was about to commit a breach of the peace. The Court emphasised that the test for arrest is not whether a breach of the peace was actually imminent, but whether the arresting officer reasonably believed it to be so.
79. Both *Foulkes* and *Bibby* concern the common law power of arrest for breach of the peace, not the statutory offence under Section 5 of the POA. Since the common law does not generally intervene to prevent people from committing offences the duty and power to prevent a breach of the peace is exceptional (see *(Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [2007] 2 AC 105).
80. The wording of Section 5 itself does not require an imminent risk to public order. The relevant portion of Section 5(1)(a) provides that a person is guilty of an offence if they use threatening or abusive or words or behaviour *within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby*. These are entirely separate concepts from those that arise in relation to a threatened breach of the peace. The wording of the statute focuses on the likelihood of causing harassment, alarm, or distress, but makes no mention of imminence. The Divisional Court in *Abdul* confirmed that the test for an offence under Section 5 is whether the conduct was *likely* to cause harassment, alarm, or distress, not whether it was *imminently* likely to do so. There is no reason to import the requirements for a common law arrest for breach of the peace into the statutory offence under Section 5. The cases which the Appellant relied on (including the ECtHR cases of *Yefimov v Russia* (Application no 12385/15 and *Dilipak v Turkey* (Application no 29680/05)) are not directly applicable to the present facts, and the wording of Section 5 itself does not require a demonstration of imminence. The Appellant is therefore incorrect in my view to argue that an imminent risk of public disorder is required in relation to the section 5 offence. Whilst the risk of public disorder is a relevant factor for determining whether a person has committed a section 5 offence this does not mean that the risk itself must be imminent.

Ground 2

Did the Judge misdirect himself as to the police's and court's obligations under s. 6 Human Rights Act 1998 and misinterpret the law as set out *in R (Hicks) v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) and in *Pal v Commissioner of Police of the Metropolis* [2018] EWHC 2988 (QB)? Did he misapply the law in relation to section 24(5) PACE?

81. The Appellant's second ground of appeal challenges the Judge's approach to the impact of the Appellant's ECHR rights on the statutory test for arrest. The Appellant argues that the Judge erred by distinguishing between protected and non-protected speech and failing to recognise that even potentially abusive signage could be protected under Articles 10 and 11. The Appellant contends that the arresting officer should have considered these rights before arrest, and that section 6 of the Human Rights Act 1998 imposes a greater obligation on both the officer and the court to consider the objective reasonableness of the Appellant's behaviour in light of his ECHR rights.
82. The Appellant's argument, in my view, mischaracterises the judgment below. The Judge did not, as the Appellant suggests, find that Article 10 was not engaged if the Appellant's signage crossed a line into offending. He found that Articles 10 and 11 were clearly engaged. He did not use the term "unprotected speech" and his reference to a line having been crossed echoed the analysis in *Abdul* (above) at [49]: "If the line between legitimate freedom of expression and a threat to public order has indeed been crossed, freedom of speech will not have been impaired by 'ruling …out' threatening, abusive or insulting speech".
83. The Judge did not conflate the engagement of rights with the circumstances in which they may lawfully be interfered with. At paragraph 97 of his judgment he observed:

    > "On two things the authorities are unanimous. The first is that there must be convincing and compelling reasons to justify restrictions on freedom of expression and assembly (ECHR Articles 10(2) and (11(2)), there being little scope for limiting open debate on matters of public interest. The second, noted for example by Lord Sumption in Bank Mellat v HM Treasury (No2) [2013] UKSC 39, is that all cases are fact sensitive and the factual matrix in each case has to be examined closely not least of all when, as in this case, rights are engaged but their exercise is restricted by removal of placards, arrest and detention."

84. The Judge identified the central issue as whether it was reasonable for the officer to suspect that the signage crossed the threshold of a criminal act under section 5 of the Public Order Act 1986, bearing in mind the Appellant's ECHR rights. Determining this issue was a fact dependent exercise, consistent with the approach taken in *Abdul*, where the court stated [57] that:

    > "It is not possible... to establish in advance a bright-line statement of approach whereby prospective conduct or language can be styled as within or outwith the proper exercise of freedom of expression".

85. The general rights to freedom of expression and assembly do not mean an individual is protected by the Convention if they have broken the law notwithstanding that the question of whether they have done so does requires that those rights are properly taken into account. The criticism made of the Judge, that he only considered the arresting officer's state of mind and abrogated the role of the court in determining Convention compliance does not appear to me to be warranted. At paragraph 92 of his judgment he stated:

> "It is for this court to determine whether PC Blair's suspicion that the claimant had committed an aggravated section 5 offence was reasonably founded by reference to and balancing the general scope of free expression domestic and ECHR law allows".

86. The Judge had earlier made detailed findings of fact in relation to why the police officer's suspicion that an offence had been committed was objectively justified. This included the question of whether the conduct of the Appellant was or could be considered reasonable under section 5(3)(c) of PACE. The Judge did not simply dismiss the Appellant's rights because the officer suspected an offence had been committed; instead, he considered whether it was reasonable for the officer to hold that suspicion, given the engagement of Articles 10 and 11. He also considered the proportionality of the restriction imposed in accordance with the principles set out in *Bank Mellat v HM Treasury (No2)* [2013] UKSC 39 (see Ground 3 further below). The Judge's approach, in line with the relevant case law, correctly distinguishes between general rights of assembly and free speech and the specific issue of whether particular speech is protected by the law.
87. In *SXH v Crown Prosecution Service* [2017] UKSC 30; 1 WLR 1401 the Supreme Court commented at [34]:

> "Once it is accepted that the prosecutor had reasonable cause to prosecute the accused, it is difficult to envisage circumstances in which the initiation of a prosecution against a person reasonably suspected of committing a criminal offence could itself be a breach of that person's human right."

88. Goose J, in *Pal v Commissioner of Police of the Metropolis EWHC 2988 (QB)* followed this approach in relation to the question of lawful arrest and Article 10, stating [29]:

> "The Judge in relying on SXH v Crown prosecution Service, correctly identified the point, that where there was a lawful arrest it is difficult to conceive of circumstances that could give rise to an Article 10 breach."

89. Whilst it is true that the ECtHR reached a different conclusion as to interference with Article 10 rights in *Pal v UK* (44261/19), I agree with Mr. Talalay's submission that the Strasbourg decision is consistent with the domestic authorities and does not mark any departure from the core principles in *Brutus, Abdul* and *Hicks.*
90. The case involved a journalist, Ms Pal, who engaged in a prolonged dispute with another journalist and barrister, AB, starting in 2011. The dispute revolved around whistleblowing issues in the National Health Service, and involved allegations and counter-allegations through emails and online platforms. In 2011, AB filed a complaint with the police about Ms Pal's emails, leading to a Prevention of Harassment Letter being issued to Ms Pal. Three years later, Ms Pal published an article about AB on her website and made tweets alluding to a police warning against him. AB complained to the police, leading to Ms Pal's arrest for harassment. She was detained for seven hours and placed on bail with restrictions on contacting AB and posting about him. The Crown Prosecution Service did not, ultimately, proceed against her.
91. Ms Pal sued the Metropolitan Police, but her claim was dismissed by the County Court. In granting permission to appeal Nicklin J. concluded that it was arguable that the actions relied upon by the police did not constitute an objectively reasonable basis for suspecting Ms. Pal had committed an offence, particularly when viewed through the lens of Article 10.
92. The County Court had found that Article 10 was not engaged, the correctness of that that decision forming one of the grounds on which permission was given. On appeal, Goose J. concluded that by "not engaged" the first instance Judge effectively meant "not breached". As to the relevance of Article 10 he said [31]:

> "I am not persuaded that Article 10 has no relevance when the honest belief in grounds to arrest are considered objectively. If that were to be correct then it would mean that even in the most obvious cases, where a freedom of expression is being exercised and a decision to arrest is made, that Article 10 would still be irrelevant. That cannot be correct. However, far from the Judge not having considered Article 10 as part of the objective justification, it was explored in evidence at trial. During cross examination of the arresting officer, PC Bharj, she was questioned whether she had considered the appellant's Article 10 rights when forming her honest and reasonable suspicion. In evidence she confirmed that she had. This was accepted by the judge and was a clear finding of fact on the evidence. It was not argued on behalf of the appellant that it was not open to the Judge to make such a finding."

93. Goose J. dismissed the appeal deferring to the County Court Judge's fact finding role and his acceptance of the officer's statement that she had considered Convention rights but discounted them based on AB's claims that Ms. Pal's actions affected his privacy. The Strasbourg court concluded that there was no evidence that the arresting officer had considered the relevant criteria for balancing Article 8 and Article 10 rights. It referred to the fact that the CPS had decided to drop charges, based on its assessment of Ms. Pal's article and tweets as falling within the bounds of free speech.
94. As the Judge in this case observed *Pal* is at some distance from the facts with which he was concerned. In *Pal* the Metropolitan Police had travelled to Birmingham where they had effected the arrest on suspicion of harassment contrary to section 2 of the Protection from Harassment Act 1997. This section of the Act deals with pursuing a course of conduct that amounts to harassment. The conduct alleged did not emerge at or shortly before the moment of arrest. It was based on a series of articles and social media posts. There was the opportunity for reflection and assessment. The circumstances were very different from those that confronted the police in this case where they were concerned with a risk to public order in the febrile atmosphere that followed major terrorist incidents and where they had to make a decision on the spot.
95. Mr. Quintavalle's criticism of HHJ Saggersons's approach in this case was that:

> "once the Judge satisfied himself that the arrest was lawful then he considered that Article 10 was not therefore engaged and so did not merit further consideration; This was mistaken. The suggestion that article 10 is not engaged if the arrest is lawful arises from a misreading of the cases of [Pal and Hicks]".

96. That does not seem to me to be a fair summary or critique of the Judge's approach in so far as it suggests that the Judge accorded no role to Convention rights in analysing whether the arrest was lawful. On the contrary he did conclude that Article 10 was engaged and in relation to the *Pal* case said [96]:

> "In Pal v Commissioner of Police of the Metropolis [2018] EWHC 2988 (QB) at [31-32], Goose J identified that the engagement of Article 10 arose in the context of consideration by the Court of whether the objective grounds for arrest had been made out. With respect I consider him to be right and this is what I have tried to articulate above."

97. The objective grounds for arrest include the objective assessment involved in the suspicion that an offence had been committed and the assessment of the necessity of arrest. The Judge's approach in the present case is also consistent with court's analysis in *Castorina* (above) where the court considered the appellant's Article 10 rights in the context of the reasonableness of the arresting officer's suspicion. There are numerous examples of circumstances in which courts have upheld convictions in relation to speech that, while made in circumstances engaging Article 10, was deemed sufficiently threatening or abusive, to warrant restrictions. In *Abdul* (above), for example, the

Divisional Court upheld convictions for shouting slogans such as "British soldiers murderers" during a military homecoming parade.

98. In *Vejdeland and Others v Sweden* (Application no. 1813/07) The ECtHR, upheld restrictions on speech that was deemed to incite hatred or violence. The issue in the case was whether the applicants' conviction for distributing leaflets containing homophobic statements at a school violated their right to freedom of expression under Article 10. The applicants argued that their conviction was an unjustified interference with their right to freedom of expression and their genuinely held views. The Swedish courts found that the leaflets contained expressions of contempt for homosexuals as a group, which was prohibited under Swedish law notwithstanding that the purpose of the leaflets was to spark a debate on a topic in respect of which the applicants held sincere views:

> "54 The Court notes that the applicants distributed the leaflets with the aim of starting a debate about the lack of objectivity of education in Swedish schools. The Court agrees with the Supreme Court that even if this is an acceptable purpose, regard must be paid to the wording of the leaflets. The Court observes that, according to the leaflets, homosexuality was "a deviant sexual proclivity" that had "a morally destructive effect on the substance of society". The leaflets also alleged that homosexuality was one of the main reasons why HIV and AIDS had gained a foothold and that the "homosexual lobby" tried to play down paedophilia. In the Court's opinion, although these statements did not directly recommend individuals to commit hateful acts, they are serious and prejudicial allegations.
> 55. Moreover, the Court reiterates that inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner..."

99. The ECHR determined that the interference with the applicants' freedom of expression was prescribed by law and pursued the legitimate aim of protecting the reputation and rights of others. Thus, the Swedish authorities were entitled to consider the specific content of the leaflets and the circumstances in which they were distributed as exceeding the limits of acceptable criticism and constituting hate speech. They had struck a fair balance between the applicants' right to freedom of expression and the need to protect the rights of others.

100. The Appellant's argument in this case involves the proposition that police officers must conduct a quite separate proportionality assessment, that is to say in addition to considering whether the requirements of section 24 PACE have been satisfied, in order to justify the interference with an individual's ECHR rights which inevitably arises from a lawful arrest.

101. In *James v Director of Public Prosecutions* [2016] 1 WLR 2118, the court upheld a conviction for aggravated trespass during a protest, finding that the appellant's conduct fell outside the scope of protected speech under Articles 10 and 11. The case concerned a protestor who was arrested for failing to comply with police-imposed conditions during a public assembly. The court found that the prosecutor only needed to establish that the defendant's conduct met the criteria for the offence. It was not necessary for the court to consider the proportionality of the prosecution decision.

102. The restrictions in question in *James* were imposed under section 14(1) of the POA which empowers a senior police officer to impose conditions on public assemblies if

they reasonably believe that the assembly may result in serious public disorder, serious damage to property serious disruption to the life of the community or intimidation of others.

103. In his judgment in *James*, Davies LJ commented [50 & 51]:

> "50 I agree with the judgment of Ouseley J. I add some observations of my own, not least because I was one of the Judges in *Abdul v Director of Public Prosecutions* (2011) 175 JP 190.
>
> 51 section 14(5) of the Public Order Act 1986 has to be read in the context of articles 10 and 11 of the Convention, which confer qualified rights. The justification in any particular situation for the qualification of those rights and the proportionality of the restrictions on freedom of speech and of assembly imposed are capable of being accommodated by the express words of the relevant statute or measure as applied to the facts of the particular case. By way of example, section 4A(1) of the Public Order Act 1986 (the relevant provision in *Dehal v Crown Prosecution Service* (2005) 169 JP 581) and section 5 of the Public Order Act 1986 (the relevant provision in *Abdul's* case) satisfy such requirement by permitting reasonableness to be raised as a defence. As stated in *Director of Public Prosecutions v Percy* (2002) 166 JP 93, para 25 in the context of a case on section 5 the statutory provisions contain the necessary balance between the rights of freedom of expression and assembly and the right of others not to be insulted: thus those rights are accommodated within the statutory language."

104. Mr. Quintavalle submitted that the court was obliged to consider the Appellant's convention rights as defences under section 5(3)(c) POA, relying on the decision of the Supreme Court in *Ziegler v DPP* [2021] UKSC 23 and that a distinct proportionality assessment by reference to Convention rights (see further below) was required, on the part of the police or the court, in deciding whether the arrest was necessary within the terms of section 24(4) PACE.

105. The *Ziegler* case clarified the test for assessing the 'lawful excuse' defence when Convention rights, such as freedom of expression and assembly, are in issue. The case involved protestors who obstructed a road leading to an arms fair. They argued they had a 'lawful excuse' because their actions were a proportionate exercise of their right to protest. It was common ground on the appeal to the Supreme Court that the availability of the defence of lawful excuse depended on the proportionality of any interference with the defendants' rights under articles 10 or 11.

106. However, the proportionality assessment considered in *Ziegler* related to the question of conviction (where proportionality was an ingredient of the offence – see *DPP v Cuciurean* [2022] EWHC 736 (Admin) - not the initial decision to arrest. *Ziegler* distinguished between the role of the police in assessing reasonable suspicion for an arrest and the role of the court in assessing proportionality in relation to conviction. This distinction is echoed in the *SXH* case (above) which also drew a distinction between the role of the police and the court.

107. The Judge's role in this case, a civil action in tort, was to determine if the police officer had a lawful basis for the arrest, considering the information available known to him. The Judge correctly focused on that question and did not fall into error by not conducting a separate proportionality assessment of the type suggested by the Appellant or by requiring that the arresting officer went beyond the well-established parameters set out in *Castorina* and the cases which followed it.

108. As Mr. Talalay submitted the Appellant's argument was to the same effect as that rejected in *Hayes* (above) where Mr. Hayes contended that an arresting officer must actively consider all alternatives to arrest before making an arrest. Mr. Quintavalle's

formulation of what would in practice be required is that the proportionality assessment in relation to both arrest and detention should be "properly conducted according to the methodology imposed by the Strasbourg Court". This was essentially an argument that the arresting officer must separately consider whether an arrest is a proportionate response to the suspected crime, rather than one which was necessary under section 24 PACE; a requirement which the court in *Hayes* considered would impose an "unrealistic and unattainable burden" on the police.

109. In *Hayes* the court referred to *Shields v Chief Constable of Merseyside Police* [2010] EWCA Civ 1281 in which the Court of Appeal concluded that the necessity requirement in PACE incorporates the *Wednesbury* principle of reasonableness and is compatible with Article 5 of the ECHR, confirming that separate consideration of Article 5 is not required when applying the necessity test. The *Hayes* case affirmed this approach, noting that the necessity test adequately addresses the right to liberty under Article 5 of the ECHR.

110. Similarly in *Hicks v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) the Divisional Court determined that if an arrest is lawful under domestic law, specifically section 24 of PACE, then arguments based on the Convention "fall away". This directly contradicts the assertion that a separate proportionality evaluation is required and supports the principle that the domestic legal framework, when correctly applied, provides sufficient protection for individual rights, by aligning with the ECHR's standards.

111. At paragraph 94 of the judgment in the present case the Judge rejected an argument which he regarded as impermissibly imposing a "super compliance" requirement under the HRA. The Appellant's argument that this involves a misreading of *Hicks* is itself, in my view, a misinterpretation of the judgment in *Hicks*. Whilst the court in *Hicks* stated that Convention arguments fell away once an arrest is deemed lawful under domestic law, the judgment relates to the overall legality of the arrest, encompassing both the reasonable suspicion and necessity elements. The court's finding was not solely focused on the legality aspect of Article 10 of the ECHR (whether the arrest had been "prescribed by law"), as the Appellant suggests. Instead, the judgment explicitly affirms that the proportionality principle does not impose any additional requirements beyond the necessity test established in section 24 of PACE. As the court observed [207]:

> "If the arrest met the necessity requirement in s.24(5), we do not think that any separate point of substance arises by reference to proportionality."

112. The Judge's approach to the matters raised in Ground 2 of the appeal was, in my view, correct. He properly considered the Appellant's ECHR rights in the context of the statutory test for arrest. His conclusion that the officer's suspicion was reasonable was justified on the facts as was his determination that arrest was necessary. He properly applied the law in concluding that a separate proportionality assessment of the sort suggested by the Appellant was not required. He did not disregard the Appellant's Convention rights. As he observed [94]:

> "Any failure on the part of PC Blair or the Court to account for, and weigh in the balance, these significant Convention rights may, however, impugn the conclusion that at any stage of the process PC Blair's decision and actions were objectively justified."

113. In addition to the more general arguments advanced, the Appellant argued that the Judge erred in finding that the arrest was necessary under sections 24(5)(c) and 24(5)(e) of the Police and Criminal Evidence Act 1984 (PACE).

114. The appellant contended that s.24(5)(c) PACE, which allows for arrest to prevent injury to the arrested person or others, cannot be read compatibly with the ECHR if it

allows arrest where it is necessary to protect the arrested person himself. As I understand this submission that is because the derogations permitted to Articles 9, 10 and 11 include reference to "the rights of others" which would exclude the person vindicating the right in question.

115. The plain language of section 24(5)(c) refers to the arrested person. Parliament, in enacting section 24(5)(c), clearly intended that an arrest could be lawfully conducted for the purpose, in this context, of protecting the person being arrested from the potential consequences of disorder ("suffering physical injury") arising from the suspected offence. In making this argument, the Appellant seeks to impose a restriction on the statutory power of arrest which does not exist on the face of the statute, in circumstances where there is no Section 4 HRA incompatibility challenge.

116. Further, the Appellant's argument that this interpretation of section 24(5)(c) would be incompatible with the ECHR is not supported by any authority. It was not suggested that there is anything in the jurisprudence of the European Court of Human Rights to suggest that it would be unlawful for a state to detain a person for the purpose of protecting that person from harm which might result to them from their commission of an offence.

117. In any event the basis for arrest was not confined to the possibility of a risk of harm eventuating to the Appellant himself but extended to the risk to "other persons" as a result of public disorder.

118. The Appellant further argued that the Judge's conclusions on the applicability of section 24(5)(e) PACE were perverse because the Judge held that it was reasonable for PC Blair to believe it was necessary to arrest the Appellant in order to question him and ascertain if prosecution was appropriate. This was perverse, it was said, because an interference with constitutional rights cannot legitimately be undertaken in order to determine whether that same interference is justified. I agree with Mr. Talalay's submission that this mischaracterises the judgment. The Judge accepted that the arrest was necessary because of the need for a prompt and effective investigation of the offence including by interview. He did not determine that absent such further investigation there was no lawful ground for the arrest. The suggestion that there was nothing further that could be added to the circumstances apparent on the ground lies uneasily with the fact that the Appellant did then provide a prepared statement at the police station which formed part of the material on which the CPS reached its subsequent decision. This ground was in any event ancillary to that relied on under section 24(5)(c).

Ground 3: Proportionality of Arrest and Detention

Did Judge wrongly hold that the arrest and detention were proportionate to the legitimate aim?

119. The Appellant's third ground of appeal challenges the Judge's finding that the arrest and detention were proportionate to the legitimate aim pursued. The ground falls into several parts. My overall impression was that this ground was essentially re-argument of matters that were well within the evaluative task that the Judge had to perform.

120. First, it is contended that the Judge erred in his assessment of proportionality by focusing solely on the duration of the detention rather than considering whether the detention itself was justified in the first place. Mr. Quintavalle drew attention to a

number of the Judge's findings, principally that [67]: "I am satisfied that the lawfulness of the duration of the detention has been satisfied," and argued this suggested an inappropriate focus on the length of detention at the expense of examining the necessity or proportionality of the fact of detention.

121. However, detention inherently begins with arrest, so that the lawfulness of the initial arrest renders the subsequent detention lawful from the outset. For the reasons set out earlier the Judge considered the lawfulness of the arrest fully. He, was then obliged, as he reminded himself, to assess whether the Respondent had established the lawfulness of the whole period of the detention that followed, (see *Taylor v Chief Constable of Thames Valley Police* [2004] 1WLR 3155) The Judge plainly considered both the legality of the initial arrest and the subsequent duration of the detention.

122. Secondly the Appellant argues that the Judge should have concluded that the police had failed to adequately consider alternative, less intrusive measures, before resorting to arrest and detention. Specifically, the Appellant argues the police should have considered:

a) Street bail: Releasing the Appellant at the scene with conditions to return for further questioning.
b) Immediate release: Releasing the Appellant without conditions, subject to potential further investigation.

123. The Appellant contends that these alternatives would have been less restrictive of his Article 10 rights, while still allowing the police to gather necessary information and determine the appropriate course of action. The Appellant relies on the principle of proportionality as articulated in *Bank Mellat v HM Treasury (No 2)* [2014] AC 700.

124. In that case Lord Reed described the approach to proportionality in relation to the achievement of a legitimate aim as capable of being summarised:

> "...by saying that it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."

125. The Judge in the present case made explicit findings that arrest and detention were necessary and proportionate and considered both street bail and immediate release. He concluded that the Appellant's actions created a risk of disorder, justifying the need for swift police action, and that the arrest was necessary to prevent further escalation of the situation and ensure public safety. He also found that the detention period was reasonable, allowing for the necessary investigation, medical attention, legal advice and the decision-making process in relation to potential charges. These conclusions were based on the evidence he heard from those who were present, including the Appellant, and those who took the relevant decisions both at the point of arrest and in the police station when the Appellant's further detention was authorised. They were heavily fact dependent as any application of the principles in *Bank Mellat* is bound to be. As the Respondent submitted the Judge's conclusions on these issues are to be viewed against the background of his extensive consideration of the Appellant's Article 10 rights

throughout the judgment, as well as his explicit recognition of the need for proportionality.

126. Thirdly, the Appellant argues that the Judge erred in not considering the impact of s.29J of the Public Order Act 1986 (for the terms of which see earlier). To the extent that this submission formed part of the general argument that this provision demonstrated a legislative intent to protect non-threatening speech critical of religion, even if such speech is considered insulting or abusive, I have considered it elsewhere in this judgment.

127. However, as a matter of statutory construction section 29J cannot apply to the circumstances of this case. The words "nothing in this Part", refer to Part 3A of the POA, which created a series of offences related to stirring up religious or racial hatred. The Appellant was arrested for a racially aggravated offense under section 5 of the Act, which is contained in Part 1 of the legislation. Section 29J, has no bearing on the case and could not possibly be used to support an argument that the Judge made an error of law by failing to take it into account.

128. Fourthly, The Appellant advances two arguments, grounded in *Percy v DPP* [2001] EWHC Admin 1125 to support the argument that the Judge failed to give appropriate weight to his right to proselytise:

a) the Appellant contends that the Judge focused excessively on the form of the protest, specifically the wording on the sign, to the detriment of recognising the importance of right to proselytise. Mr. Quintavalle likened this approach to that criticized in *Percy*, where the court highlighted the danger of placing too much emphasis on the manner of protest without giving due consideration to the underlying right to freedom of expression, especially when the protest concerns a matter of public interest.

b) the Appellant argues that the Judge failed to engage in the robust balancing exercise required by *Percy* merely asserting that the restrictions, namely the prohibition of the signs and the subsequent arrest, were proportionate without demonstrating any proper consideration of the relevant factors, including the right to proselytise. The Appellant argues that this mirrored the flawed approach identified in *Percy*, where the Judge's mere statement of proportionate interference without a demonstrable balancing exercise was deemed insufficient.

129. Ms. Percy was convicted under section 5 of the Public Order Act 1986 for defacing an American flag in protest against the "Stars Wars" program. The case therefore involved the intersection of Ms. Percy's right to convey a message, protected by Article 10, and the way she chose to convey it, by defacing the flag. The court acknowledged that while insulting Americans by defacing the flag might not be protected by Article 10, Ms. Percy's actions were motivated by her strong beliefs and intended as a protest.

130. The central issue was whether her chosen method of protest, while conveying an otherwise inoffensive message, was so unreasonable or disproportionate as to remove the protection of Article 10.

131. The Court in *Percy* held that a prosecution under section 5 of the Public Order Act does not automatically engage Article 10, but rather depends on the specific facts and the balance between competing interests. The court also identified several relevant factors for consideration in these types of cases, including whether the conduct went beyond legitimate protest and whether the behaviour, while part of an open expression of opinion on a matter of public interest, had become disproportionate and unreasonable.

132. The appeal in Percy succeeded for reasons summarised by Hallet L.J as follows:

> "In my judgment, at the crucial stage of a balancing exercise under Article 10 the learned District Judge appears to have placed either sole or too much reliance on just the one factor, namely that the appellant's insulting behaviour could have been avoided. This seems to me to give insufficient weight to the presumption in the appellant's favour, to which I have already referred. On the face of it, this approach fails to address adequately the question of proportionality which should have been, and may well have been, uppermost in the District Judge's mind. Merely stating that interference is proportionate is not sufficient. It is not clear to me from the District Judge's reasons, given in relation to his findings under Article 10, that he has in fact applied the appropriate test. Accordingly, in my view, it appears that the learned Judge inadvertently, in the course of a very careful and thorough examination of the facts and the law, has fallen into error."

133. That is not, in my view, an error into which the Judge fell in the present case. The Judge did not solely focus on the form of the protest: As the Respondent argues the Judge considered various factors beyond the sign's wording, including the potential for disorder and the Appellant's refusal to cooperate with less intrusive police requests. This was on any view a broader analysis that went beyond simply scrutinising the form of the protest.

134. The judgment repeatedly acknowledges the Appellant's Article 10 rights, and the need to balance these rights against other interests. The Judge did in fact engage in a demonstrable balancing exercise. While he may not have explicitly articulated a precise weighting of the various factors, his reasoning is a nuanced evaluation of the Appellant's rights against public order concerns. What was required was a practical and context-specific balancing exercise of the sort which the Judge clearly carried out.

Ground 5

Did the Judge wrongly find that Article 9 ECHR was not "engaged"?

135. This ground concerns whether the Judge was correct to find that Article 9 ECHR was not engaged in the factual circumstances of the case because the Appellant's exhortation to 'Hate Islam' on the Hate placard was not intimately linked to his Christian beliefs. Since the s.7 HRA claim is no longer being pursued, the Judge's ruling on whether Article 9 was engaged is academic. Even if the Judge erred in finding Article 9 was not engaged, this would not strictly affect the outcome of the appeal as the Appellant is no longer seeking a remedy for any alleged breach of Article 9. If the arrest was a lawful interference with Article 10-11 rights, it was necessarily a lawful interference with the Appellant's Article 9 rights. Its significance, if any, is that the Judge's conclusion removed from the balancing exercise consideration of the fact that, on his case, the Appellant was exercising a right protected by Article 9.

136. In reaching his conclusion as to the engagement of Article 9 The Judge observed:

> "Irrespective of whether the Claimant regards Christianity as a religion (which he says he does not) no manifestation of his religious beliefs reasonably carries with it the need to 'Hate Islam.' The latter is far from a manifestation or necessary concomitant of the former. It is merely a gratuitous reflection of a wholly ancillary opinion. In any event the opinion could easily have been expressed or manifested by the use of alternative words"

137. The Judge referred to *Eweida v UK* 57 EHRR 8 (48420/10) in support of his conclusion that there was no sufficiently close nexus between the Appellant's Christian beliefs and the Hate placard. His conclusion that the Appellant's opinions could have

been communicated using different language reflects the ECHR's judgment in *Cha'are Shalom Ve Tsedek v France* (Application no 27427/95), referenced in *Eweida*, where the availability of alternative means to obtain ritually slaughtered meat meant that no interference with religious practice had occurred.

138. The *Eweida* case involved four separate applicants claiming violations of their Article 9 rights to manifest their religious beliefs. Ms. Eweida's claim focused on the balance between an individual's right to manifest their religion and an employer's right to project a corporate image. The Court held that while British Airways had a legitimate aim in seeking to project a certain image, the outright ban on Ms. Eweida wearing a small cross was disproportionate given the discreet nature of the cross and lack of evidence suggesting any negative impact on the company's brand or image.

139. The key principle which emerges from *Eweida* for present purposes is that the relevant statement/conduct must be intimately linked to a person's religion in order to be protected by Article 9 ECHR. In other words, there must be a close nexus between the statement/conduct in question and the manifestation of religious belief. Further where a person could have manifested their belief in a variety of ways, and the conduct chosen is only loosely connected to that belief, then Article 9 may not be engaged.

140. In *R (Begum) v Head Teacher and Governors of Denbigh High School* [2007] AC 100 Lord Scott observed [86] :

> "Freedom to manifest one's religion" does not mean that one has the right to manifest one's religion at any time and in any place and in any manner that accords with one's beliefs. In *Kalaç v Turkey* (1997) 27 EHRR, 552 , para 27, the Strasbourg court said that"… in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account." And in *Ahmad v United Kingdom* (1981) 4 EHRR 126 , para 11, the Commission said that"… the freedom of religion … may, as regards the modality of a particular religious manifestation, be influenced by the situation of the person claiming that freedom."

141. The Appellant asserts that the Judge incorrectly applied the "nexus" test established in *Eweida*, in assessing the connection between his beliefs and his actions in displaying the signs. The Appellant argues that his placard, while expressing hatred toward Islam, stemmed from his understanding of Christianity. He claims that the Judge failed to acknowledge this link, instead focusing on the availability of alternative, less offensive phrasing. In doing so, he argues, the Judge overlooked his right to share his religious beliefs, a key element of Article 9 protection. He contends that his act of displaying the placard, however offensive, constituted an attempt to communicate his religious perspective, and that the Judge's dismissal of this aspect of Article 9 was a significant error in circumstances where a proper application of the test in *Eweida* would have led to a different outcome, recognising the engagement of Article 9 and the need for a more comprehensive balancing of interests.

142. However, the *Eweida* case sets out a test which has to be applied by the court. It cannot simply be a case of asserting that a particular statement is a manifestation of religious belief in the expectation that this puts the matter beyond examination. In *R(Williamson) v Secretary of State* [2005] 2AC 246 Lord Nicholls explained:

> "the threshold requirements are implicit in Article 9 of the European Convention and compatible guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection".

143. In this case the Judge had to make the assessment required and had the benefit of hearing from the Appellant in order to make an evaluative judgement. *Eweida* itself can be distinguished from the present case because, as the Respondent argues, the nature of the Appellant's expression differs significantly from Ms. Eweida's discreet display of her faith. The Judge concluded that the placard reading "Islam = Terrorism," was intended to condemn an entire religion rather than represent a genuine manifestation of the Appellant's own beliefs. A statement designed to promote hatred towards, and the suppression of, another religion is capable of falling outside the scope of Article 9 protection, even if made in the course of proselytising, because, in the context of this case, it is seeking an objective that is incompatible with Article 9(1), by preventing Muslims from being able to practice their faith (see *Kokkinakis v Greece* (1994) 17 E.H.R.R. 397).

144. I do not consider that the Judge fell into error in concluding that Article 9 was not engaged for the reasons which he gave and which reflect the application of the relevant test, which he properly identified; in any event I am not persuaded that the Judge's conclusion that Article 9 was not engaged had any material impact on the outcome of the case. Even if the Judge had considered Article 9 to be engaged, he would, in my view, have been bound to reach the same conclusion, namely that the arrest was lawful.

Conclusion

145. I conclude that the Judge was entitled to find on the evidence that that the arrest and detention of the Appellant was lawful. He did not misapply the law or fall into error. It follows that this appeal is dismissed.

END