



Neutral Citation Number: [2019] EWHC 888 (QB)

Case No: QB/2018/0279

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 April 2019

Before :

MRS JUSTICE THORNTON DBE

Between :

**THE COMMISSIONER OF POLICE FOR THE
METROPOLIS**

Appellant

- and -

MR

Respondent

Ms Charlotte Ventham (instructed by **Metropolitan Police Legal Department**)
for the **Appellant**

Mr Stephen Cragg QC (instructed by **Imran Khan & Partners**) for the **Respondent**

Hearing dates: 19 March 2019

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MRS JUSTICE THORNTON DBE

Mrs Justice Thornton :

Introduction

1. This is an appeal against a decision made by Her Honour Judge Baucher following a trial at the Central London County Court in which she gave judgment on 3 July 2018. By that decision, the judge upheld MR's claim for false imprisonment and assault following what was, in her judgment, an unlawful arrest carried out by police. She made an order granting damages of £2,750 to MR. Permission to appeal was rejected by the lower Court at a hearing on 14 September 2018.
2. The Commissioner of Police for the Metropolis appeals against the judgment in the Court below on grounds that the Judge erred in finding that the arresting officer's belief in the need to arrest MR was not objectively reasonable. MR cross appeals, asking this court to uphold the decision of the lower court on the additional or separate basis that there were no objectively reasonable grounds for the arresting officer's suspicion that MR had committed the offence of harassment.
3. Section 24 Police and Criminal Evidence Act 1984 (PACE) provides the police with statutory authority to arrest a suspect who they reasonably suspect of committing an offence, providing the arrest is necessary.
4. The following issues are before the court:
 - 1) Was the officer's suspicion that MR had committed the offence of harassment objectively justified at the point at which he arrested MR?
 - 2) Was it objectively necessary to arrest MR, to allow the prompt and effective investigation of the offence or of the conduct of MR?

Background facts

5. The Respondent, MR, was in an intermittent relationship with Ms A for approximately 15 months prior to January 2010. On 6 January 2010, Ms A contacted the police to make a complaint against MR. She was visited by a police officer, DC Farrimond, the next day and provided a statement in which she alleged she had received numerous texts and calls from MR since she had broken off their relationship, despite requests from her that he leave her alone. She also alleged that on one occasion in October 2009, after a number of calls from him, the intercom at her home had been buzzed continuously for some time.
6. DC Farrimond carried out enquiries regarding the name given to him by Ms A but was unable to trace anyone with his name. Ms A had however provided police with MR's mobile number.
7. On 11 January 2010, MR received a telephone call from PC Omodoye based at Walworth Police Station and arrangements were made for MR to attend Walworth Police Station. According to MR he arranged to attend the station on 13 January and subsequently rearranged the appointment for a day earlier. The crime reporting information system (CRIS) indicates that MR was due to attend on 11 January but no one has suggested that MR was seeking to evade the appointment.

8. On 12 January, at 8am, MR voluntarily attended the police station. According to MR, he waited in the foyer area. He was approached by DS Murphy at 8.30am. DS Murphy immediately arrested MR on suspicion of harassment. MR said he was shocked by the turn of events and sought to explain that he was willing to co-operate with the police. He was interviewed by another police constable. He was photographed. His fingerprints and DNA samples were taken. He was released on conditional bail, having been detained for approximately 6 hours and 50 minutes.
9. MR's phone was retained by police. Ms A also surrendered her phone to police. The police reviewed the text messages between Ms A and MR. Their content was friendly. The texts were not threatening or abusive on the part of MR. They did not reveal any clear request by Ms A that MR leave her alone. The police accordingly reviewed the case and decided there had been no crime committed.
10. On 2 February 2010, MR was informed no further action would be taken against him.

The judgment below

11. At trial, HHJ Baucher heard oral evidence from MR and the arresting officer, DS Murphy. She found DS Murphy to be a careful and considered witness who presented as a professional and experienced detective.
12. The judge rejected the contention that DS Murphy would have just arrested MR because he had been told to do so by another officer. She accepted his evidence that he reviewed the entirety of the CRIS report prior to arresting MR.
13. She accepted his evidence that, having considered the CRIS report, he suspected MR of committing the offence of harassment. Having reminded herself that the threshold for suspicion is a low one she concluded that the officer's suspicions were objectively reasonable on the basis that the elements of the offence of harassment were made out on the face of the CRIS. Her reasoning was as follows:

“37 When considering whether DS Murphy's decision was objectively reasonable Mr Cragg did not contend that further enquiries were required or that DS Murphy was not entitled to rely upon the contents of the CRIS. Indeed, for the purpose of considering objectivity I was invited by both Counsel to review the entirety of the CRIS report up to the time of arrest. I confirm that I have done so to consider whether the suspicion was objectively reasonable.

38 I am satisfied that the officer was entitled to consider PS Crockett's opinion and reject it. It was clear that Ms A was referring to persistent unwanted conduct and the Claimant had been asking questions about her existing relationship when she had requested there should be no contact. DS Murphy placed emphasis on the fact that the victim had come to the police as a last resort and I consider that he was entitled to reach the view: “I would have believed there was some measure of alarm or distress because regardless of whether she showed it she was saying it was persistent and unwanted conduct”.

14. The Judge then considered whether DS Murphy had reasonable grounds for believing that it was necessary to arrest MR, pursuant to the test under section 24(4) PACE. She found that the officer's stated contemporaneous reason for the need to arrest MR

was ‘so that you can be interviewed on tape’. This was then recorded on the custody record as ‘to allow for the prompt and effective investigation of the offence or of the conduct of the detained person’ (s24(5)(e) PACE). Having considered the evidence, the Judge accepted DS Murphy’s evidence that he believed the arrest was necessary. However, she went on to conclude that the officer’s belief in the need to arrest MR was not objectively justified. She did not consider it reasonable to arrest MR at the outset. Matters could have proceeded by way of a voluntary interview and an arrest made, if circumstances required:

“66. Thus, it is not a question of asking whether any officer could have made the decision but I must direct myself to DS Murphy and his grounds. Ms Ventham fought valiantly to persuade me that any objective assessment of the factors justified the necessity of the arrest. I am not so persuaded. DS Murphy conceded that on a scale this offence was at the lower end. In those circumstances I simply do not accept that it was reasonable for the officer to have arrested the Claimant from the outset. He could have proceeded with a voluntary interview and then if necessary arrested the Claimant if circumstances dictated such. The reason opined by DS Murphy for not doing so on his analysis applies in every case-namely that the Claimant would be free to leave if he found any topic too difficult. Further this was not a case where, had a decision to conduct a voluntary interview been made, the officer would necessarily have intended to arrest the Claimant. Whilst I accept had such occurred that would have led to delay but on the facts of this case I cannot see that any delay would have impeded any investigation. I do not consider that DS Murphy’s view that there was some urgency to progress the investigation was justified. Further any interview, whether voluntary or otherwise, would have been taped.

67. I also do not accept that the need to establish the Claimant’s true identity was a reasonable ground justifying the necessity of the arrest. The Claimant would have had to provide his particulars for the purpose of the voluntary interview and whilst that would not have been as forensic as fingerprints or DNA the Claimant’s full name and address as available on his passport could have been run through the police national database.

68. I am also not satisfied that bail conditions provided an objective justification on the particular facts of this case albeit I accept that bail conditions can form part of section S24(5)(e) notwithstanding the ground (d) provision. Whilst on the basis of the CRIS report DS Murphy did not know that the Claimant had agreed not to contact Ms A there were other means at the officer’s disposal to ensure there was no contact without arrest. He could have issued a harassment warning.

69. *DS Murphy said that in his experience the Claimant was unlikely to volunteer his phone. I accept DS Murphy's evidence but I am not satisfied that belief, when objectively reviewed, was reasonable. Firstly the text messages and received calls would have been evident on Ms A's phone and secondly on DS Murphy's analysis every case involving telephoning evidence would justify arrest.*

70. *I accept Ms Ventham's submissions as to the facts in Hanningfield and R(L). However, both those legal authorities show the need for the trial judge to objectively scrutinise the officer's reasoning. Indeed, as Ms Ventham opined, each case is indeed fact specific. When such an analysis is applied to this case I am not satisfied that when viewed objectively the combination of factors whether individually or collectively identified by DS Murphy satisfied the test of necessity. He could, and should, have conducted a voluntary interview. If that had not proceeded in a satisfactory manner he could then have arrested the Claimant. Indeed, that is the whole purpose of S29.*

71. *It follows that in the light of my findings the Defendant has failed to discharge its burden on the second limb of Hayes. The arrest was therefore unlawful. The Claimant's case succeeds on his pleaded claim of false imprisonment."*

15. Additionally, MR's claim for assault was made out in relation to the taking of a mouth swab and the pressing and rolling of his thumb for fingerprint purposes.

Legal framework

16. The offence which MR was suspected of committing was the offence of harassment under section 2 of the Protection from Harassment Act 1997.
17. Section 2 provides that:

1. Prohibition of harassment

- (1) *A person must not pursue a course of conduct*
- (a) *Which amounts to harassment of another and;*
- (b) *Which he knows or ought to know amounts to harassment of the other.*

2. Offence of harassment

- (1) *A person who pursues a course of conduct in breach of section 1(1)... is guilty of an offence.*

...

7. *Interpretation of this group of sections*

..

(2) *Reference to harassing a person includes alarming the person or causing the person distress.*

18. The requirements for a lawful arrest are set out in Section 24 Police and Criminal Evidence Act 1984:

“(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.*

...

(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—*

...

(e) *to allow the prompt and effective investigation of the offence or of the conduct of the person in question;”*

19. Section 29 PACE provides as follows in relation to voluntary attendance at a police station:

“Where for the purposes of assisting with an investigation, a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested

a) *he shall be entitled to leave at will unless he is placed under arrest*

b) *he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.*

Reasonable suspicion

20. In *Castorina v Chief Constable of Surrey* (1988 160 LG Rev 241), Woolf LJ identified the relevant questions for establishing that there are reasonable grounds for an officer’s suspicion under section 24(2) PACE:

- 1) Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.
 - 2) Assuming the officer had the necessary suspicion was there reasonable cause for that suspicion? This is a purely objective requirement to be determined by the Judge if necessary on the facts found by the jury.
 - 3) If the answer to the two previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion the question arises as to whether the discretion has been exercised in accordance with the principles laid down by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1948) 1 K.B 223
21. The Court of Appeal has approved an embellishment of these questions in *Parker v Chief Constable of Essex Police* [2018] EWCA Civ 2788, to take into account the introduction of the statutory requirement for necessity. The embellishments do not impact on the issues raised in this case.
22. The threshold for a police officer to suspect the commission of an offence and an offender is low:

“As it was put by Lord Devlin in Hussein v Chong Fook Kam (1970) A.C 942 at 948 “Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking. ‘I suspect but I cannot prove’. Suspicion may or may not be based upon reasonable grounds but it still remains suspicion and nothing more. By applying a test of something which was not suspicion but was ‘something a good deal more than suspicion’, I think that the learned judge erred and that this error was fundamental to his conclusion.”

Holtham & Holtham v Commissioner of the Police of the Metropolis [1987] Lexis Citation 632 per Sir John Donaldson MR.

Necessity of the arrest for a prompt and effective investigation

23. In *Hayes v Chief Constable* [2012] 1 WLR 517, Hughes LJ set out the two-stage test for assessing the necessity of an arrest under section 24(4) PACE. The arresting officer must: 1) honestly believe that arrest is necessary for one or more of the identified section 24(5) reasons and 2) his decision must be one which, objectively reviewed afterwards, according to the information known to him at the time is held to be made on reasonable grounds.

Submissions on behalf of the Police Commissioner

24. On behalf of the Police Commissioner, Ms Ventham pointed to the low threshold in the caselaw to justify an officer's suspicion as to the commission of an offence by a suspect. The content of the CRIS report justified DS Murphy's suspicions in this regard. The Protection from Harassment Act includes reference to alarm or distress

as the definition of harassment, but the definition does not purport to be comprehensive. There was no error by the Judge in finding the officer's suspicion objectively justified.

25. The Judge had, however, erred by stepping directly into the shoes of the arresting officer and effectively substituting her own view for his as to the necessity of the arrest. The judgment was patchy, flawed and inconsistent. The Judge was inconsistent in concluding that the officer was an experienced professional but then concluding his views were not objectively justified. She gave too much weight to the relatively low-level nature of the offence which MR was suspected of committing. She failed to recognise the interconnected nature of the officer's reasons. The need to arrest was justified in a case such as this where the suspect had been elusive. The Judge placed too much weight on the availability of MR's passport, the existence of which was not known to the arresting officer at the time and should not therefore have been considered. The Judge's reasons for reflecting DS Murphy's assessment that it was necessary to arrest MR to seize his phone were conflicting and/or unclear.

Submissions on behalf of MR

26. On behalf of MR, Mr Cragg submitted that it was hard to see from the CRIS report how DS Murphy could reasonably have suspected MR of harassment given the recorded view of PS Crockett doubting that a crime had been committed. The Judge had failed to provide a proper assessment of the reasonable grounds for suspicion and failed to explain how the elements of the offence of harassment had been made out in the CRIS report. Mr Cragg relied on *Alford v Chief Constable of Cambridgeshire* [2009] EWCA Civ 100, to submit that this Court should conduct its own review of the CRIS report and come to its own conclusions on whether the officer's suspicion could be said to be objectively justified in light of the elements of the offence of harassment.
27. As to the necessity of the arrest, the Judge had correctly identified the relevant legal principles and applied them to the specific facts before her. The Judge did not give undue weight to the low-level nature of the offence in question, which was only part of her reasoning. She recognised the interconnected nature of the officer's reasons but found they were not convincing. The Judge's reference to MR's passport was simply a general reference to the ways in which MR's identity could be established without arresting him. Ms Ventham's submissions amounted in large part to no more than expressing disagreement with the Judge's conclusions.

Discussion

28. It is an inherent, but regrettable, risk of the police diligently performing their duties that sometimes innocent members of the public are arrested. However, as long as the police act lawfully, those who suffer from this risk have to bear the cost in the interest of the rest of society's need to be protected from crime. Where an arrest has taken place, it is for the person who makes the arrest to establish that it is lawful (*Castorina v Chief Constable of Surrey* (1988) 160 LR Rev 241 Woolf LJ).
29. Section 24 Police and Criminal Evidence Act (PACE) provides the police with the necessary statutory authority to arrest a suspect who they reasonably suspect of committing an offence providing the arrest is necessary for, in this case, the prompt and effective investigation of the offence.

30. A decision on the existence of reasonable grounds for arrest, for suspecting an offender or as to the need for arrest, is treated as a question of law rather than of fact, although it will involve an evaluation of the facts and, in many cases, a weighing of different factors. The question is one on which an appellate court has to reach a conclusion of its own, rather than limiting itself to deciding, for example, whether the trial judge's conclusion was plainly wrong. If, however, the trial judge has approached the task correctly, it will generally be appropriate to place weight on their assessment, given their proximity to the evidence and their better overall “feel” for the case. An appellate court is likely to be slow in practice to interfere with the trial judge's conclusion: *Alford v Chief Constable of Cambridgeshire Police* [2009] EWCA Civ 100 at [33]. Accordingly, and at Counsels’ request I approach my judgment by considering the judgment below before forming my own view on the matters in question.

Was DS Murphy’s suspicion objectively justified?

31. The test for establishing that there are reasonable grounds for suspicion is well established. The Judge below had first to satisfy herself that DS Murphy genuinely thought that MR might be guilty of an offence of harassment when he arrested him. The answer to this question depended entirely on her findings of fact as to the officer’s state of mind and there is no challenge to her finding in that respect. The challenge is to her view that DS Murphy had reasonable cause for his suspicion. Mr Cragg contended that DS Murphy’s suspicion was not justified given the CRIS records PS Crockett as doubting that an offence had been committed. However, the Judge made clear that she considered DS Murphy’s counter view was reasonable, namely that Ms A had gone to the police as a last resort and her actions could constitute evidence of alarm or distress (see paragraph 38 of her judgment). As the Judge recognised, the threshold for suspicion is low. I can identify no error in her approach.
32. With a view to reaching my own conclusions, I reviewed the CRIS report prior to and up to 12 January 2010, which is when MR was arrested. At page 101, an entry from DS Crockett on 8/1/2010, sets out his assessment that the repeated texting to the complainant constituted a ‘clear course of conduct’, which is a component of the offence of harassment. However, DS Crockett concluded that there was no harassment because there had been no abuse or threats and MR was keen to carry on the relationship. Nonetheless, like the Judge below, I can see the force in DS Murphy’s assessment that contacting the police is likely to indicate some degree of alarm and distress even if the complainant does not describe herself as alarmed or distressed. Accordingly, I have reached my own conclusion that DS Murphy’s suspicions were objectively reasonable as at 12 January 2010.

Was it objectively necessary to arrest MR?

33. There was some discussion before me as to the role played by the public law *Wednesbury* test in the Court’s objective assessment of the necessity of any arrest. Ms Ventham relied initially on an extract from Hughes LJ’s judgment in *Hayes* (at paragraph 36) to submit that the reviewing Court should only interfere if satisfied that no reasonable officer could have considered the arrest necessary. This, it seemed to me, would set a high threshold for the Court’s intervention and could be said to shift the burden of justification away from the police onto the person arrested. As Ms

Venthan subsequently recognised, Lord Thomas LCJ considered the role of the Wednesbury test in *R (B) v Chief Constable of NI* [2015] EWHC 3691 (Admin).

“22. The PSNI went further in submitting that the true question for the court was not the two-stage test identified above, but rather a traditional “reasonableness” review by reference to the principles laid down in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223. Thus, the decision to arrest would be lawful if we were to conclude that a reasonable police officer in DCI Harrison's position could have reached the decision that arrest of the Claimants was necessary for a prompt and effective investigation of the Claimants' alleged offences.

23. We find no support for this contention in the recent authorities. Their effect is that the appropriate test is the two-stage one identified in Hayes. That approach incorporates the Wednesbury principle of review via the concept of reasonable grounds, brought forward from the previous law and extended to the new general requirement of necessity (see Hayes at paragraph 15 and Joshua Shields (by his litigation friend Rebecca Shields) v Chief Constable of Merseyside Police [2010] EWCA Civ 1281 at paragraph 13). There is no separate or overarching review based on Wednesbury principles to be carried out. The objective second limb of the test encompasses the concept of Wednesbury reasonableness.”

34. Jay J elaborated on the analysis of Lord Thomas CJ in *(R)L* [2017] EWHC 129 (Admin) (a judicial review):

“Insofar as the second limb deploys the adverb “objectively”, all that means is that this Court, in the exercise of its judicial function, applies independent, objective standards to its review of the Defendant's decision: in particular, the reasonableness of the grounds upon which that decision was founded. That review is carried out on the basis of information known to the decision-maker at the time it was made. Finally, the Court does not ask itself whether any police officer could rationally have made the decision under challenge; it directs itself to the particular decision maker and his grounds. In my view, that is what this Court, Lord Thomas CJ presiding, was saying at paragraphs [22] and [23] of its judgment in R (B) v Chief Constable of the PSNI

35. The decision to arrest involves a deprivation of liberty. The purpose of the objective test of necessity is to protect the public:

“Where the liberty of the subject is at stake, the decision of police officers is open to review by the court. Whilst the expertise, knowledge and operational judgment of the police

officers is to be respected, what is required is careful scrutiny by the court. The second stage of the test therefore amply protects the liberty of the subject.” R (B) v Chief Constable of NI [2015] EWHC 3691 (Admin) Lord Thomas LCJ.”

36. The accountability of officers for their actions is achieved by the requirement of necessity, which sets a higher bar than simply “desirable” or “convenient” (*R*)*L* [2017] EWHC 129 (Admin) at [40]).
37. In the Court below, HHJ Baucher correctly identified the two-stage test in *Hayes* (at paragraphs [45] and [46] of her judgment). She recognised that the second limb of the *Hayes* test encompasses *Wednesbury* reasonableness (at [65]). Ms Ventham submitted that the Judge erred in failing to adopt a *Wednesbury* style approach by allowing the officer the benefit of his operational experience. Instead she stepped into his shoes and effectively retook the decision herself. I do not accept this submission. The Judge’s reference to “*Thus it is not a question of asking whether any officer could have made the decision but I must direct myself to DS Murphy and his grounds*” at [66] demonstrates her understanding of her reviewing role.
38. At [65] she recognised the importance of the safeguard provided by the objective test. She recognised that necessity sets a higher bar than desirable or convenient. She acknowledged that it is not for a judge to second guess the operational decisions of experienced police officers, but that there must be a rational reason for an officer to reject alternatives to arrest ([59]). She identified the question whether it is necessary to arrest anyone attending voluntarily is a fact specific assessment ([61]).
39. In my judgment, her legal analysis demonstrates her mastery and application of the relevant legal principles.
40. Ms Ventham submitted that the Judge was inconsistent in finding that the arresting officer was experienced and professional but not then accepting his view that it was necessary to arrest MR. However, the effect of Ms Ventham’s submission is to elide stages 1 and 2 of the *Hayes* test, thereby defeating the statutory purpose of the court’s objective review, which is to protect the public and safeguard liberty.
41. Next, Ms Ventham contrasted the present case with the cases of *Hanningfield* and (*R*)*L*. In those cases, she said, the court systematically identified the flaws in the officer’s reasoning, a process which did not happen here. I do not accept the submission. At paragraphs [66]-[71], the Judge identifies the flaws in the officer’s reasoning.
42. I do not accept Ms Ventham’s submission that the Judge placed undue weight on the fact that the offence of harassment was at the lower end of the scale. Read fairly, the relevant reference at [66] in this regard is only part of her reasoning. Although she places some reliance on the low-level seriousness of the offence, she also relies on other facts (individually and collectively) including:
 - (1) The officer could have proceeded with a voluntary interview and arrested MR if circumstances dictated ([66]).
 - (2) There was no urgency to progress the investigation ([66]).

- (3) The need to establish MR's true identify did not justify arrest ([67]).
 - (4) Possible bail conditions did not justify arrest ([68]).
 - (5) Obtaining MR's telephone did not justify arrest ([69]).
 - (6) The combination of factors 'viewed collectively' did not satisfy the test of necessity ([70]).
43. Ms Ventham submitted that the officer's reasons for arrest were interconnected, a feature the judge failed to recognise. I do not accept her submission. At paragraph [70] of her judgment, the judge makes specific reference to "*I am not satisfied that when viewed objectively the combination of factors whether individually or collectively identified by DS Murphy satisfied the test of necessity*".
 44. Ms Ventham submitted that the Judge erred in relying on the fact that MR had his passport because the arresting officer was not aware of this fact. However, read fairly, paragraph [67] of the judgment is to read as a general analysis about the ability of the police to establish MR's identity, otherwise than by arresting him.
 45. Accordingly, I have arrived at the view that HHJ Baucher approached her task correctly.
 46. I now proceed to make my own assessment of the objective necessity of the arrest.
 47. The test of necessity is more than simply 'desirable' or 'convenient' or 'reasonable'. It is a high bar, introduced for all offences in 2005 to tighten the accountability of police officers (*Hayes* at [14]). I simply cannot see that it was necessary to arrest MR on his arrival at the police station. The police were in possession of his mobile phone number and MR had come voluntarily when asked to attend the station.
 48. It seemed to me that, at times, Ms Ventham's submissions amounted to an attempt to persuade the court as to the merits of her client's position. She described MR as a 'shady' character who had been secretive during his relationship with Ms A. This was not a description of MR which appeared in either the CRIS report or in the judgment below. Moreover, there is, it seems to me, a material distinction between MR's elusiveness in a personal relationship and his behaviour with the police. Far from being elusive, MR had voluntarily presented himself at the police station shortly after the police first made contact with him. In any event, I accept Mr Cragg's submission that the personal characteristics of MR are an area where this court should be cautious in interfering with the trial judge's assessment of matters given the Judge heard evidence and this court has not.
 49. Whether a person attending at a police station voluntarily for the purpose of assisting with an investigation needs to be arrested is fact specific. The officer who has given no thought to alternatives to arrest is exposed to the risk of being found by a Court to have had objectively no reasonable grounds for his belief that arrest was necessary (*Hayes* at [34] & [40]). The obvious alternative to arrest was to interview MR, establish his identity and require that he hand over his phone. Any difficulties in this regard could have necessitated his arrest at that juncture, but not before. Whilst

acknowledging the operational experience and professionalism of the officer, I cannot see a rational basis for the arrest.

Conclusion

50. For the reasons given above, the appeal and cross appeal are dismissed. The Judge was correct to identify the low threshold for the arresting officer to have reasonable grounds to suspect the commission of an offence by MR. I am satisfied on my review of the CRIS report that the threshold had been crossed. However, I agree with the Judge below that there was no objective need to arrest MR, given his voluntary attendance at the police station. Accordingly, his arrest was unlawful.