

Neutral Citation No: [2020] NIQB 75

Ref: McF11382

ICOS: 16/000094

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 17/12/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

STEVEN CAMERON

Plaintiff

-v-

CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

Defendant

Mr Cleland BL (instructed by Reid Black Solicitors) for the Plaintiff
Mr Skelt QC (instructed by the Crown Solicitor's Office) for the respondents

McFarland J

Introduction

[1] By Writ of Summons the plaintiff claims damages for injuries received when bitten by Police Dog Eros ("Eros") in the grounds of the Shane's Castle Estate, Antrim on 3 February 2014. He alleges assault and trespass of the person, negligence in the control and deployment of the dog, and breach of duty under the Dogs (Northern Ireland) 1983. At the hearing he did not pursue the breach of statutory duty.

Evidence and Findings of Fact

[2] The plaintiff had spent the afternoon and evening of Sunday 2 February 2014 at the home of his step-brother in Randalstown. Alcohol was consumed. At approximately 2 a.m. on 3 February 2014 he intended to drive home to Rathkyle in Antrim. As he was exiting the roundabout over the M2 motorway (known locally as the "Ballygrooby Roundabout") intending to turn into the Castle Road in the direction of Antrim, he had the misfortune, he said, to come upon a pheasant, and swerving to avoid the bird, put the car into a spin, crossed the other carriageway and

then, heading backwards, went through a fence and crashed into the estate wall of Shane's Castle Estate.

[3] He was unable to re-start the car, and then telephoned his step-brother for assistance. He said the call was terminated early by a disconnection, and the plaintiff was uncertain if his step-brother had heard the full description and location of his plight. He said that he remained at the scene for a period, and then in an effort to arouse a local resident to gain access to a telephone he walked down Castle Road towards Antrim but could find no house with the occupants awake. He then re-traced his steps back to the car, and after waiting for a further period decided to go into the Shanes' Castle Estate in an effort to find someone who may be awake. After a period of wandering about in the estate, he then decided to return to his car.

[4] In the interim period, a mobile police patrol happened upon the scene of the collision. The two officers examined the vehicle noticing house keys abandoned in the car with other personal items, but no key in the ignition. Checks revealed the car was untaxed, had no vehicle test certificate, and that the plaintiff was the registered keeper. At this time the step-brother appeared on the scene in a vehicle with a tow-rope. One police officer remained with the step-brother and the other police officer drove to the plaintiff's home and later returned not having determined the plaintiff's whereabouts. Fearing for the plaintiff's safety and concerned that he may be lying injured somewhere, the officers sought the assistance of the police dog team, which arrived at the scene quite quickly as it was based locally at the Steeple, Antrim.

[5] At this stage, the evidence presented to the court diverges dramatically. The plaintiff stated that as he was working his way back to the car and negotiating the trees and undergrowth in the estate, he reached a point about 50 metres from the wall. It was dark, but there was some ambient light from the roadside. He said he heard nobody speaking or shouting and then suddenly he noticed the shape of a large dog jumping over the wall and running towards him. Fearing for his safety he turned away and started running and shortly after that he felt a bite to his right thigh area which brought him down. He described how the dog then released him and then started biting him in the face area, before then going down his body to bite him on his right calf. He said that this attack by the dog went on for a period he estimated to be 3 - 5 minutes. He then said that a police officer arrived and that officer tried to pull the dog off by the tail, and the dog then turned on that officer who backed off and the dog then returned to biting the plaintiff.

[6] About a minute later another officer arrived. He had the appearance of being the handler, but he too had difficulty removing the dog, but eventually did so. He was then removed from the scene, arrested, and taken to Antrim Police Station. During the struggle, the plaintiff said that the car keys, which had probably been in a rear pocket of his trousers, must have come out.

[7] The evidence of the police officers was different. After the dog handler

arrived, he said that he approached the estate wall, which he estimated to be about 6 to 7 feet in height. He heard some movement within the estate grounds and shouted for the person to come forward and identify themselves. In the absence of a response this demand was repeated with a warning that a police dog was in attendance. In the absence of a response, the dog handler removed Eros from the vehicle and placed him on a short leash. On returning to the wall a further warning was shouted. The dog handler then placed Eros on a long leash, gave him the order to stay and the dog handler then climbed the wall. When on top of the wall, the dog handler used his powerful police torch and was able to identify the shape of a person in the undergrowth. He then uttered a further warning at which point the person ran away.

[8] The dog handler then instructed Eros to jump the wall which he did with ease, and the officer then dropped down into the estate. Eros still remained restrained by a long leash at this stage. The officer and dog then started to follow the person, and further warnings were given. The dog handler then gave a warning to stop or the dog would be released. The person still was running away and Eros was released with the instruction to 'stop'. A final warning that the dog had been released was then shouted. Eros very quickly reached the person. A short time later (estimated to be no more than 30 seconds) the dog handler arrived and noticed that Eros had attached himself to the plaintiff's calf, and he ordered the release, with the dog obeying. The dog then remained barking at the plaintiff. The dog handler ordered the plaintiff to stand and as he did so, the dog handler noticed the plaintiff put his hands in his pockets and then throw something away.

[9] Another officer had been adjacent to the dog handler at the time of the initial deployment and his evidence confirmed the evidence of the dog handler. He was uncertain as to the number of shouts and warnings, but in general terms he agreed that numerous instructions and warnings had been given. After the dog handler had got over the wall, this other officer also climbed the wall but as he was encumbered by equipment he was not as agile as the dog handler and was a little further behind. He eventually caught up and arrived when the plaintiff was standing up. He did not, nor would he have ever, attempted to remove a police dog by pulling its tail. This officer then took the plaintiff back to the road, administered first aid, and the other officer who had remained roadside throughout, having formed the opinion that the plaintiff was intoxicated due to his demeanour, arrested the plaintiff. During this period, Eros located the car keys lying approximately 6 - 10 feet away.

[10] The step-brother and the arresting officer also gave evidence. The step-brother had remained in his vehicle and he did not recollect hearing any noises or shouting. The arresting officer was standing beside the vehicles. His evidence was that he did hear shouting which he believed was coming from within the estate. He could not make out what was being said, but he was sure it was shouting of a volume and type that would be used by someone giving instructions, as opposed to someone screaming in pain.

[11] I reject the plaintiff's version of events. His activity that night has to be considered in context. He claimed to have consumed 4 to 5 bottles of beer on the Sunday, and he was supported in that regard by his step-brother. At 5 am when a breath test was administered at Antrim Police Station the readings were 36 and 40. Such readings at 5 am would not be suggestive of consumption between 2 pm on the Sunday and 2 am on the Monday of 4 to 5 bottles of beer. In addition, the plaintiff was due to appear at Coleraine Magistrates' Court on the 10 February 2014 to be sentenced for offences of failure to provide a specimen and driving when unfit. Notwithstanding the likelihood that his identity could have been traced by police, having consumed the amount of alcohol he had, with his sentencing for similar offences pending, and having lost control of his untaxed and uncertified car, there was sufficient motivation to avoid detection. Throwing the car keys away when apprehended was clear evidence of his state of mind at the time, as he was trying to avoid the appearance of a direct link to having driven the car.

[12] His perambulations that evening as he described them, were implausible in any event, not least because the police record that they telephoned his mobile telephone number and it did ring before being cut off, and further calls went straight to voice mail. He was well motivated by the predicament he found himself in, and I am satisfied, on the balance of probabilities that he had remained in the vicinity of the scene, hoping his step-brother would arrive and remove him and the car, but when this was prevented by the police arrival, he laid low in the Shane's Castle Estate to avoid detection.

[13] I also reject his description about how he came upon his injuries. The evidence of the police officers concerning the warnings and orders shouted and the release of Eros was much more compelling. The evidence concerning the training and continuous assessment of Eros and his handler indicate a highly trained officer and a highly trained dog, working as a team. The dog displayed no adverse personality traits. It is inconceivable that Eros would be released roadside, directed over the wall without warnings uttered, and then deployed beyond the wall without any handler control. It is also inconceivable that a highly trained dog would follow a course of conduct which ignored its training and would act in an uncontrollable manner.

[14] That training involved release under direction. The attack would only take place if the person was running away. If the person stopped running the dog would not attack but would maintain a distance in close proximity and await the handler. If the person was running away, the original bite would be aimed at the arm, but if that is not available then the calf. The bite would then be maintained until the handler arrived and on the order of release, the dog would release, stand back, until the person was secured.

[15] The description by the plaintiff of the actual assault being sustained, continuous and lasting 3 - 5 minutes, even taking into account the difficulty to be

precise about times, is a gross exaggeration. The medical evidence from Mr Brennen FRCS refers to the A & E notes. These notes were not before the court. Mr Brennen said that the notes indicated dog bites to the right leg, his buttocks, right side of the scalp and right lower eye lid. Mr Brennan refers to the facial injuries as superficial. I have viewed photographs taken of the injuries at the time. I am not satisfied that the facial injuries were caused by Eros biting in this area. It would be against all his training and the nature of the injuries are such that it is highly improbable that they were caused by bites. The plaintiff suggested that eye lid injury was caused by a paw. That may be a possibility, but I put it no higher than that. The facial injuries were more likely caused by the fall or undergrowth.

[16] I accept that the leg injuries would have been caused by bites. The dog handler accepted that the calf injuries would have been caused by Eros, and although he thought it unlikely, he did not rule out the possibility that the thigh injury was as well.

[17] I do however reject any notion that the plaintiff was the victim of a sustained attack involving multiple bites. This is not borne out by the injury sites and it is highly unlikely as it would go against all training Eros has undergone and would indicate a trait which heretofore has not been displayed. It also goes without saying that a sustained assault of the nature and duration described by the plaintiff, would have resulted in much more serious, possibly life threatening, injuries.

[18] In summary, on the balance of probabilities, I find the following core facts -

- a) The initial purpose of deploying the dog team was to locate a missing person, primarily to ensure that that person was not injured;
- b) The dog team consisting of the dog handler and Eros, was highly trained with regular and rigorous assessment;
- c) Eros was an experienced police dog of 7 or 8 years of age at the time and had not shown any indication of failure to accept and obey instruction from his handler;
- d) The plaintiff was hiding in a wooded area of the Shane's Castle Estate adjacent to the collision scene with an intention of avoiding detection by the police because of his level of intoxication;
- e) On arrival, the dog handler, on hearing the plaintiff moving about in the undergrowth of the estate, demanded the plaintiff come forward to be identified;
- f) The plaintiff refused to do so;
- g) The dog handler suspecting that this then unidentified person may have committed an offence relating to the driving of the car decided to

- apprehend the person for the purposes of an arrest;
- h) Adequate warnings, of an escalating nature, were shouted and the plaintiff heard the warnings;
 - i) These warnings included warnings that a police dog team was present and that the dog would be deployed if the plaintiff ran away and did not stop;
 - j) The plaintiff, contrary to police warnings, ran away;
 - k) Eros was then deployed. He entered the estate still restrained on a long leash. After a final warning that he would be released, he was then released from the leash to run free of his handler;
 - l) The plaintiff, after a final warning, was aware that Eros was running free and in pursuit;
 - m) Eros quickly caught the plaintiff.
 - n) Had the plaintiff stopped the dog would not have attacked;
 - o) The plaintiff did not stop and in accordance with his training, Eros engaged with the plaintiff. Initial contact may have been to the upper back right thigh, but a bite was made to the right calf, and Eros maintained that bite in a locked position until the dog handler arrived a very short time later;
 - p) When the handler arrived he ordered Eros to stand down and the dog did so.
 - q) On the instruction of the dog handler, the plaintiff then stood up.
 - r) The plaintiff on standing up threw his car keys away.
 - s) The plaintiff was then secured and removed by police.
 - t) Eros found the car keys 6 - 10 feet away.

The law

[19] Article 26 of the Police and Criminal Evidence (Northern Ireland) Order 1989 ("PACE") (as amended) provides as follows -

26. - (1) A constable may arrest without a warrant -

(a) anyone who is about to commit an offence;

- (b) *anyone who is in the act of committing an offence;*
- (c) *anyone whom he has reasonable grounds for suspecting to be about to commit an offence;*
- (d) *anyone whom he has reasonable grounds for suspecting to be committing an offence.*

(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 –*

- (a) *anyone who is guilty of the offence;*
- (b) *anyone whom he has reasonable grounds for suspecting to be guilty of it.*

(4) *But the power of summary arrest conferred by paragraph (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in paragraph (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 paragraph (6)); or

- (v) causing an unlawful obstruction on a road (within the meaning of the Road Traffic (Northern Ireland) Order 1995 (NI 18);*
- (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.*

Article 88 of PACE provides that when a constable is exercising a power conferred by PACE the constable may use reasonable force, if necessary, in the exercise of the power.

[20] In addition section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (“CLA”) provides that a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large. Viscount Dilhorne in *Farrell v Secretary of State for Defence* [1980] 1 WLR 172 at 178H – 179A stated that this section “*may provide a defence to a person sued...[W]hen such a case is put forward the question to be determined is whether the person who is . sued used such force as was reasonable in the circumstances in which he was placed in . bringing about a lawful arrest of an offender or suspected offender.*”

[21] The focus is therefore on the belief of the dog handler and the amount of force he deployed by use of the dog. Assistance can be obtained from the criminal law and how it approaches the issues of self-defence, and prevention of crime defences. There are two basic issues to be determined. First, were the facts (as the dog handler believed them to be) such that the use of force was necessary for the purpose of the arrest? And secondly, was the degree of force used reasonable to effect the arrest in light of the facts as perceived by the dog handler. The test therefore requires consideration of the subjective perception of the dog handler, and the objective assessment of what was reasonable. Unlike the criminal law, it will be for the defendant to prove, on the balance of probabilities, the elements of this defence.

[22] As for the claim in negligence, Lord Reed in *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 at [47] quoted with approval the law as stated by Sir John Donaldson MR in *Marshall v Osmond* [1983] QB 1034 at 1038C – “*I think that the duty owed by a police driver to the suspect is .. the same duty as that owed to anyone else, namely to exercise such care and skill as is reasonable in all the circumstances*”. In *Marshall* the claim arose from a police pursuit of suspects in another vehicle and which resulted in a collision during which the plaintiff sustained a broken leg. The claim

was dismissed as although it was accepted there was an error of judgment by the police driver, the judge was not satisfied that he was negligent.

[23] Three English Court of Appeal decisions give further guidance as to application of these principles – *Pollard v Chief Constable of West Yorkshire Police* [1998] EWCA Civ 732, *Murgatroyd v Chief Constable of West Yorkshire Police* [2000] Lexis Citation 4027 and *Roberts v Chief Constable of Kent* [2008] EWCA Civ 1588.

[24] In *Pollard*, the police dog was deployed to assist in the arrest of a group of youths who had been breaking street lights. With the assistance of the dog, four were arrested with one bitten on the neck and ear. The issue was whether the use of force was reasonable in the circumstances (applying section 3(1) CLA). Had the handler set the dog on the suspect and ordered it to attack and bite, then the defence would not be available. However, there was no evidence that the dog would act otherwise than correctly in accordance with its training. There was a risk that the dog would bite if the suspect had not remained stationary or had acted aggressively. In the circumstances the Court of Appeal held that it was not an unreasonable use of force to use a properly trained and properly handled police dog. Henry LJ also stressed that the police had a duty to take reasonable steps to apprehend offenders as there is a strong public interest in the maintenance of effective policing.

[25] *Murgatroyd* is a different case as it related to the use of the police dog to effect an entry, so the police used the English equivalent to the PACE defence as they had a power to enter. The Court of Appeal said that they did not use reasonable force. The plaintiff had barricaded himself into his home and was threatening to kill himself with a knife. Police responded and deployed a police dog. There was no immediate threat that the plaintiff would further injure himself. The dog was deployed first through the door as an additional means of protecting the officers, notwithstanding their own protective equipment. In those circumstances the Court of Appeal held that the trial judge had been correct in allowing the claim for dog bites caused to the plaintiff.

[26] Finally, I mention *Roberts* which is another arrest case. The dog handler came upon the plaintiff who was asleep in his car with the engine running. On being asked to get out for a breath test to be administered, the plaintiff ran off. Three warnings were issued, including one that the dog would be released. Both officer and dog were highly trained. The plaintiff did stop and the dog stood down and barked in accordance with training. The plaintiff then started to act aggressively towards the dog pushing and kicking it, at which point the dog bit his arm, again in accordance with training. When the dog handler reached the plaintiff, the plaintiff started to attack the dog handler, leading to a more aggressive response from the dog, again all in accordance with training. The plaintiff received severe injuries which required hospitalisation for eight days. The Court of Appeal upheld the first instance decision that the CLA defence applied and that the force used was reasonable in the circumstances. Specifically the Court of Appeal rejected the three-fold suggestion on behalf of the plaintiff that there is always a risk when a dog

is released that the person will be bitten, particularly if he resists; that it was not reasonable or proportionate to release the dog in the first place; and with the dog handler suspecting that considerable alcohol had been consumed, the plaintiff could not be guaranteed to act sensibly in the presence of the dog.

[27] Drawing together the themes emerging from the legislation and the case-law, the following could be regarded as a statement of the current law in relation to the use of police dogs –

- a) When exercising a power conferred by PACE (e.g. arrest, search, detention, effecting entry of premises, with or without a warrant) reasonable force as is necessary is allowed to be used (Article 88 PACE).
- b) In addition, when preventing crime or arresting a suspect, force can be used that is reasonable in the circumstances (Section 3(1) CLA).
- c) The test applying to both the PACE and CLA provisions is identical and it is whether the force is reasonable, in other words necessary and proportionate.
- d) In determining whether the force is reasonable this will depend on the perception of the police officer at the time of the incident faced with the situation that he or she faced.
- e) Provided it is reasonable, an officer is allowed to use his or her own physical force, an object or weapon (e.g. baton, spray, taser, stinger device, firearm), or a dog.
- f) As a dog is capable of independent action, the animal and the handler must have regular specialist training, which will include regular assessment and re-assessment.
- g) Any dog which is not capable of acting in accordance with its training or instruction from its handler should not be deployed.
- h) Before releasing a dog, if it is possible, a suitable warning, or warnings, should be given, including warnings that the person should stop and submit.
- i) Directing a dog to bite, or releasing a dog for the purpose of biting, could be permitted but only if it is reasonable, and not, for example, to merely preserve the safety of police or others, when other less serious methods could be used.
- j) When a police officer acts reasonably, and a person has been suitably warned and he or she ignores the warnings, or acts in a way that is aggressive towards the dog or the police officer, or acts in a way that is contrary to common sense in the presence of the dog, he or she will not succeed in a claim in tort against the police.

- k) A person who has consumed drink and drugs so that he is under the influence of drink or drugs, takes responsibility for his or her own conduct.

Discussion

[28] Was the force used by the dog handler with the decision to release Eros reasonable in the circumstances? For it to be reasonable, it had to be necessary to effect the apprehension and arrest, and it had to be proportionate.

[29] The dog handler's initial role was essentially a task to attempt to locate a missing person who may have been injured. Had that role remained then deploying Eros with the 'stop' instruction would clearly not have been appropriate, and in any event it would not have been for the purposes of an arrest.

[30] The role changed when the dog handler became aware of a person within the estate. It was a reasonable assumption that this was a person linked to the car and the shuffling about with noise and a failure to respond would have indicated the person was not in need of assistance but was rather hiding from police. It was also reasonable for the dog handler to suspect that the person had committed driving offences such as careless or dangerous driving and failing to remain at the scene of an accident.

[31] Mr Cleland suggested that an arrest would not have been necessary as the identity and address of the plaintiff was known, an arrest could follow sometime later, and, in any event, that the offences involved were not that serious. The identity of the person in the estate was not known at the time. That person, given his or her proximity to the scene of the collision, was a suspect, as was the plaintiff given his connection to the car. The dog handler at that time would not have known that they were one and the same person. Apprehension of the person was perfectly reasonable in the circumstances. Part of the early apprehension of suspects is also for the gathering and retention of evidence, so an early arrest was also clearly desirable. I also consider that the potential criminal offences were sufficiently serious. Obviously there has to be an element of proportionality as the Court of Appeal in *Pollard* acknowledged by suggesting the release of a police dog to pursue a 75 year old lady who stole a chocolate bar from a supermarket would not be reasonable. The cost of the broken street light in *Pollard* was £18.62.

[32] However, in all the circumstances faced by the dog handler that night, I consider that he was acting proportionally. As the court in *Pollard* said, there is a strong public interest in effective policing, and that includes apprehending drunken youths vandalising property. There is also a strong public interest in apprehending drivers who crash cars at night, damage property, and leave the scene of the accident.

[33] Sir Christopher Staughton in *Pollard* gave a one paragraph but pertinent judgment -

"I agree. In my view, the people of West Yorkshire would be outraged if the chief constable were to say "I cannot use a police dog to track down and arrest young people who vandalise property in a disorderly fashion in the middle of the night and then run away, because there may be some risk that the dog will cause some injury to one of them.""

For my part, I feel the people of Antrim would have similar views about people who, in their locality, crash their cars in the middle of the night, cause damage to other people's property and then make off.

[31] Eros was not deployed free from his leash with an intention that he bite the person in the estate. The deployment was to stop that person from fleeing the scene so that he could be arrested. Had the person stopped running as he was instructed to do, no harm would have come to him. Eros would not have been released in the first place. Even after release the attack only began because the person continued to run away and refused to stop. Had he stopped, even at that late stage of the pursuit, he would not have been bitten and would not have suffered any biting injury.

Conclusion

[32] In the circumstances, I am satisfied that the plaintiff cannot succeed in his claim, either in assault or negligence. The dog handler was using reasonable force to arrest the plaintiff. The plaintiff has not made out any of his allegations of negligence.

[33] I dismiss the action. The plaintiff is legally assisted so he will pay the costs of the defendant, to be taxed in default of agreement, but the order for costs is not to be enforced without further leave of this court.