

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

[2025] SC EDIN 43

PIC-PN3010-21

JUDGMENT OF SHERIFF ROBERT D M FIFE

in the cause

ROSS LAMONT

Pursuer

against

THE CHIEF CONSTABLE, POLICE SCOTLAND

Defender

**Pursuer: Laing, Advocate; Digby Brown LLP, Edinburgh**  
**Defender: Advocate; Ledingham Chalmers Solicitors, Edinburgh**

Edinburgh, 1 August 2025

**Introduction**

[1] The pursuer claims damages for an alleged assault by police officers following an incident in Glasgow City Centre in December 2018. The proof proceeded primarily on liability and causation.

[2] The sheriff, having resumed consideration of the cause, finds the following facts to be admitted or proved.

**Findings in fact**

1. On the evening of 21 December 2018, the pursuer and a colleague Stuart Murray met up with a group of friends from work for dinner then drinks at a number of

pubs in Glasgow City Centre. Later in the evening, a group of four including the pursuer and Mr Murray went to Blue Dog, a cocktails and piano bar in West George Street. Blue Dog had late night opening until around 3am. Over the evening, the pursuer was drinking red wine.

2. The pursuer left Blue Dog with Mr Murray at around 3.00am. The pursuer was standing outside Blue Dog on the pavement engaged in banter with a group of members of the public. Police officers Nathan Donnelly (PC Donnelly) and Dominic Horn (PC Horn) were on uniformed police patrol on West George Street. They heard a commotion and shouting outside Blue Dog.
3. The officers crossed over the road to Blue Dog and approached the pursuer. It appeared to the officers that the pursuer was having an argument with another group of persons. The officers wanted to de-escalate the situation. The officers took the pursuer to some railings nearby creating a distance from the group. The officers did not know the dynamics of the situation and wanted to speak to the pursuer where it was more private.
4. The officers asked the pursuer for his personal details as they had formed a view the pursuer had committed a breach of the peace. The pursuer informed the officers he considered he did not require to provide his particulars as he had not done anything wrong. The officers repeatedly asked the pursuer to provide his name, address and date of birth in terms of section 13 of the Criminal Procedure (Scotland) Act 1995. The pursuer refused to do so. The pursuer was verbal resistant. The pursuer repeatedly asked the officers what he had done wrong. The officers did not answer that question. The officers told the pursuer that if he did not provide his particulars he would be arrested for a contravention of

section 13 of the 1995 Act. The pursuer continued to refuse to provide his particulars. The pursuer was by then passive resistant. PC Donnelly informed the pursuer that he was being placed under arrest in terms of section 13 of the 1995 Act.

5. As PC Horn reached for his handcuffs, the situation rapidly escalated. The officers acted aggressively towards the pursuer. They entered his personal space. They laid hands upon the pursuer. The officers attempted to restrain the pursuer. The pursuer was anxious and felt threatened by the officers as he did not think he had done anything wrong. The pursuer resisted arrest. The pursuer was active resistant. The officers struggled to control the pursuer's arms to put handcuffs on him.
6. The pursuer grabbed hold of the railings behind him with his right hand. The pursuer did not believe the officers were entitled to physically restrain him in the manner they were doing. He did not believe they were entitled to arrest him in the circumstances. PC Donnelly grabbed and pulled the pursuer's right little finger to force the pursuer to release his grip on the railing. PC Donnelly intentionally pulled the pursuer's right little finger against the normal range of movement and in so doing fractured the pursuer's right little finger.
7. Grabbing and pulling back the pursuer's right little finger was not a recognised Operational Safety Training technique. PC Donnelly did not use reasonable force. The force used was disproportionate and excessive. The force used by PC Donnelly enabled him to remove the pursuer's hand from the railings.
8. The officers were unable to restrain the pursuer using handcuffs in a standing position. The pursuer continued to be active resistant. The officers

- decided the only option available to them was to take the pursuer to the ground. Both officers had a perception the pursuer was showing superhuman strength. Both officers were scared for their own safety and for members of the public nearby. They were becoming exhausted with their efforts to restrain the pursuer. The officers did not have control of the situation. PC Horn used a leg sweep technique to take the pursuer to the ground in an uncontrolled manner.
9. As a result of the incident, the pursuer sustained injury. The pursuer attended the Accident and Emergency Department at Glasgow Royal Infirmary where he received treatment. The pursuer sustained a short spiral fracture of the proximal phalanx of his right little finger and a split depression fracture of his left tibial plateau, due to the actions of the police officers.

#### **Findings in fact and in law**

10. PC Donnelly and PC Horn owed the pursuer a duty of care, that being to use such care and skill as was reasonable in all the circumstances.
11. The level of force used by PC Donnelly in grabbing and pulling back the pursuer's right little finger to the extent the PC Donnelly caused a fracture of the right little finger was unreasonable and was a breach of the duty of care owed to the pursuer. The defender is vicariously liable for the actions of PC Donnelly in assaulting the pursuer.

**Findings in Law**

12. Finds the defender liable to make reparation to the pursuer in the sum of £12,000, inclusive of interest to the date of decree.
13. Reserves all questions of expenses. The sheriff clerk will fix a hearing on expenses.

**Witness evidence*****Ross Lamont***

[3] In December 2018, the pursuer was employed as a Customer Service Advisor in Glasgow. A staff Christmas night out was arranged for the evening of Friday 21 December 2018. The pursuer was working that day, leaving work around 7.00pm to 8.00pm. Everyone met up for a meal at The Crystal Palace (Wetherspoons) in Jamaica Street. After the meal, various groups separated. The pursuer went with a few others to another pub nearby. After that, a group of four (including the pursuer) left and went to Blue Dog, a cocktails and piano bar in West George Street. The pursuer had been to Blue Dog before, and knew it was unlikely to be as busy as other pubs in the city centre. Blue Dog had late night opening until around 2.00am to 3.00am. Over the course of the evening, the pursuer was drinking red wine.

[4] The pursuer left Blue Dog around closing time with one of his work colleagues Stuart Murray. They had had a really good night and were in good spirits. The pursuer was intoxicated but was aware of what was going on. On leaving Blue Dog, the two of them intended to get separate taxis home. There were quite a few people standing about outside the bar. The pursuer was chatting with a couple of them. The pursuer had some banter with one man about the quality of the suit he was wearing, having recently returned from a

holiday in Vietnam and the quality, and the cost of suits there. The conversation was light-hearted. The conversation was on the lines: "You can get a lot more for your money for nice clothes (in Asia)".

[5] The pursuer was first aware of police officers as they crossed the road and made a beeline for him. The officers asked for his details, being name and address. One of the officers seemed quite aggressive. The pursuer was not keen on giving these details in the middle of a street on a Friday night. The officers were standing quite close to him, getting closer as they chatted to him. It was aggressive. The questions were direct: "what's your name?", "what's your address?" They were getting right in his personal space. This went on for some time. The pursuer did not provide his details. He could see one of the officers was getting more and more annoyed. The officers would not disclose the nature of the charge or clarify what he was doing wrong. All he was told was that he was under arrest for a breach of the peace. The pursuer wanted to know why and what for before giving his details. He felt quite threatened and anxious.

[6] As the pursuer refused to give his name and address, the officers started forcing him back against a wall. The whole situation escalated. They were taking him down come hell or high water.

[7] The shorter officer made a grab for his right arm. He tried to pull his hand away and grabbed onto the railing immediately behind him. He was feeling incredibly anxious and frightened. The shorter officer managed to pull his hand off the railing by grabbing the right little finger and deliberately pulling the little finger all the way back and forward and breaking the little finger. Mr Lamont showed his little finger to the other officer. The pursuer was really annoyed. He shouted at the shorter officer: "You've just broken my finger".

[8] The pursuer was in shock. His little finger was extremely painful. This was the first time the pursuer had broken anything. He felt he had been seriously assaulted by the police.

[9] The pursuer ended up lying on the ground with the weight of one of the officers on top of him. He was probably shouting about his pinkie. He was in shock. He could not remember how he ended up on the ground. It was quite overwhelming. He was in so much pain he was unaware his leg was broken.

[10] The pursuer was on the ground for some minutes. He was then picked up by police officers. He was unable to put weight on his left leg. He immediately realised he had broken his left leg. He said to the officers present: "I can't believe you've broken my leg as well".

[11] He was put into a police van. He had to drag his leg into the back of the van and lie on the floor. He was then taken to a police station. After much debate, the police not accepting the serious nature of the injuries sustained, he was taken to hospital for treatment.

### *Stuart Murray*

[12] In 2018, Mr Murray worked with the pursuer at the call centre. They got on well as work colleagues and went out for drinks after work from time to time.

[13] On 21 December 2018, after work, Mr Murray went to Wetherspoons with the pursuer and a few other colleagues from work. Mr Murray was drinking pints of Tennents during the course of the evening. The pursuer was drinking wine.

[14] Around 1.00am, three of them went to Blue Dog: himself, the pursuer and Steve (surname not known) all work colleagues. They stayed at Blue Dog until last orders around 3.00am.

[15] By the time they left Blue Bar around 3am the pursuer was being very chatty and being funny. They were all having a good time, not falling about drunk. Steve left with two girls he came with, leaving Mr Murray and the pursuer outside Blue Dog. The pursuer was talking to some strangers, having a laugh. The pursuer made some comments about a man's suit, which the man did not take well. The man then walked round the corner with his phone. Two police officers were suddenly on the scene. The police officers removed the pursuer from the scene. Mr Murray did not know why. The pursuer was asking why he was being arrested. The next thing the pursuer was saying: "Guys, you've broken my pinkie; guys you've broken my pinkie."

[16] Mr Murray did not think the pursuer was on his feet for very long before he was taken to the ground by the officers and on his back. Mr Murray was repeatedly telling the pursuer to calm down and not make the situation worse. The pursuer was repeatedly asking the police what he had done. The pursuer was not angry, more confused, stressed, and scared. Mr Murray took a video as evidence of what was happening to keep for a later date, if needed.

[17] Mr Murray thought the pursuer was carried to the police van. He did not believe the pursuer walked to the back of a police van. Mr Murray walked home after the police took the pursuer away.

### *PC Nathan Donnelly*

[18] PC Donnelly joined the police in 2015 as a special constable. In June 2018, he was a police constable, working as a response police officer in Glasgow City centre. PC Donnelly was on duty with PC Dominic Horn from 9.00pm on 21 December 2018 until 7.00am on 22 December 2018. They were on routine foot patrol in the city centre.

[19] At around 3.00am, the officers were walking down Hope Street when PC Donnelly heard shouting and swearing coming from West George Street. As the officers crossed over West George Street to Blue Dog bar, PC Donnelly could hear the pursuer shouting when he saw him. As the officers approached the pursuer, he appeared to be in argument or altercation with another group. PC Donnelly wanted to deescalate the situation before something happened. PC Donnelly went to speak to the other group and PC Horn went to talk to the pursuer. The pursuer was still shouting. He was shouting towards PC Horn. The officers then took the pursuer across to some railings nearby to get a bit of distance and to speak to the pursuer more privately. The officers asked the pursuer to provide his particulars because in their view the pursuer had committed a breach of the peace, and they wanted to ascertain who he was. The pursuer refused to give any details as he had done nothing wrong. The officers asked him a number of times for his particulars, but the pursuer refused. The pursuer's attitude was to be completely belligerent and anti-authoritarian as he could not see what he had done wrong. The pursuer's behaviour escalated. He kept walking towards the officers into their personal space. They had to push him back. As potentially he was going to become violent. PC Donnelly described the pursuer "putting ourselves in a state of jeopardy".

[20] The officers decided to arrest the pursuer for committing an offence under section 13 of the Criminal Procedure (Scotland) Act 1995 until he told them who he was.

[21] Immediately on seeing PC Horn reach for his handcuffs, the pursuer began to pull his arms from both officers and started to shout and swear again saying "get the fuck off me" and other similar obscenities. The intention was to call for prisoner transport to take the pursuer to a police station. They had to wait for transport to arrive. The pursuer was

placed in handcuffs, as there was a potential for violence. The pursuer was still shouting and swearing and conducting himself in a disorderly manner.

[22] PC Horn applied the handcuffs when the pursuer was facing the railings. PC Horn was on the left and PC Donnelly on the right as the pursuer faced the railings. PC Horn managed to get a handcuff on the left wrist. The pursuer pulled away. He was flailing his arms to prevent the handcuffs from being applied. The pursuer was continuing to shout and swear. He pulled his right arm away and grabbed the railing.

[23] As the pursuer only had one handcuff on, that was the worst possible situation according to PC Donnelly because the handcuff could be used as a weapon against the officers. There was a high chance of the officers losing control given the pursuer's level of resistance. The pursuer's right hand grabbed the railing. The pursuer was given direct instructions to remove his grasp at least twice, but he refused to do so.

[24] PC Donnelly's preferred option was to remove the hand with some degree of force, grabbing his hand and pulling it backwards in the opposite direction from where he was pulling. PC Donnelly had excluded the following options:

1. use of a baton to remove his arm from the railing
2. use of CS pepper spray.
3. using his own set of handcuffs.

[25] All these options were excluded because of the close proximity of the pursuer and the risk of injury. There was also the environmental factor of drunken persons being nearby.

[26] PC Donnelly accepted he broke the pursuer's right hand little finger. He had no intention to do so. He demonstrated grabbing hold of several fingers and pulling the fingers back to open the hand. He repeatedly referred to grabbing several fingers. On seeing the

CCTV footage, PC Donnelly accepted he had only grabbed one finger, the pursuer's little finger.

[27] Once the pursuer's hand was released PC Horn swept away one of the pursuer's legs which resulted in him falling to the ground. It was necessary to put the pursuer to the ground because the level of resistance was so high, and the officers were struggling to secure the handcuffs. This was also for their own safety and the pursuer's safety. There had been numerous attempts to apply the handcuffs while the pursuer was upright. The pursuer was showing superhuman strength. PC Donnelly felt he was in a state of jeopardy. He was scared as well, as there were drunk people around them actively goading on the pursuer. By this time, PC Donnelly's energy levels were depleted. He was exhausted because of the amount of energy used to secure the pursuer.

[28] PC Donnelly completely refuted excessive force was used. The officers used the minimum amount of force required notwithstanding the pursuer ended up with a broken finger and a fractured knee.

[29] The pursuer has entered PC Donnelly's personal space before he was arrested. As a police officer, he would not want anyone within a distance of one metre so that the officer would have a good reaction time. PC Donnelly received officer training about personal space, and he had experience as a police officer. The pursuer was intoxicated but not so much he could not stand, and he was aware of what was going on.

[30] PC Donnelly denied pulling on the pursuer's little finger to open his fist. He demonstrated opening up the fist by applying pressure to a number of fingers. It was not a case of just pulling back on his little finger. That would not have achieved the outcome. PC Donnelly's recollection was that he pulled on several fingers.

[31] PC Donnelly formed the view they were going to take the pursuer to the ground, using a leg sweep. PC Horn was in a better position to do this safely whereby the pursuer would fall forward and to the ground. That is what happened. Each of the officers held the pursuer's arms and controlled the fall to the ground. PC Donnelly accepted that in taking the pursuer to the ground caused him to fracture his knee.

*PC Dominic Horn*

[32] PC Horn had been a police constable since 2018. He was working with PC Donnelly from 9.00pm until 7.00am on the night of the 21 to 22 December 2018. They crossed West George Street to speak to the pursuer. They had heard a commotion and loud shouting. They believed the pursuer was committing a breach of the peace. He was engaged in an argument with another man. The pursuer was the main aggressor. When the officers approached the pursuer, he was acting aggressively. He was not willing to speak to the police. He was informed that he had committed an offence. He was asked to provide his name and address. He refused to provide his particulars. He was charged and arrested for an offence under section 13 of the 1995 Act.

[33] The pursuer was belligerent from the outset. His attitude escalated as matters progressed. He was getting into the face of PC Donnelly, waving his arms about and acting in an agitated manner. PC Horn personally felt the pursuer had to be arrested to keep the officers safe as well as the public. The pursuer had committed a breach of the peace and failed to provide his personal details. He was told he was under arrest. He began to resist arrest, tensing his arms, flailing about and pulling away. PC Horn managed to get one handcuff on the pursuer's left hand. The officers turned him round to apply the handcuffs. He resisted arrest and grabbed onto a railing with his right hand. The pursuer presented a

risk to himself and others with only one handcuff applied. The pursuer's arms were flailing around. The handcuff is a weapon, a bit of metal swinging about at high velocity with a risk of serious injury, and a free arm free to assault.

[34] Eventually, after a struggle, PC Horn used a leg sweep to take the pursuer to the floor and take control of the situation.

[35] The pursuer was resisting arrest violently. He was too strong. PC Horn was feeling scared. He was exhausted by the effort required to get the pursuer to the ground. PC Horn denied using excessive force.

[36] The pursuer was intoxicated. Once the pursuer grabbed the railing with his right hand the officers intended to take the pursuer to the ground in a safe position. As the pursuer continued to struggle, by the time the pursuer was taken to the ground PC Horn was exhausted.

[37] PC Horn denied excessive force was used, using expressions such as: "in my heart of hearts justified" "could not have done anything else"

*A Joint Expert Witness Report was prepared by the expert witnesses Ms Joanne Caffrey and Mr Martin Graves dated 24 November 2024, comprising the Overall Opinions of the experts; general points of agreement; specific points of full agreement regarding the officer's use of force; points of partial agreement with quantifying statements; and areas of disagreement.*

*Ms Joanne Caffrey*

[38] Ms Caffrey was a former police officer with extensive experience concerning deaths or injuries in custody; police custody procedures; and the use of force within all of the custody sectors. Ms Caffrey spoke to her report dated 21 October 2022 and the Joint Expert Report.

[39] On use of force, Ms Caffrey referred to the Operational Safety Training Manual – Module 1 Use of Force at section 2:

“Any force used must be proportionate, legal, accountable, necessary and ethical in the circumstances and the minimum amount necessary to accomplish the lawful objective concerned.

Action must be proportionate in relation to the competing rights of a subject and any force used should be no more than is absolutely necessary in this regard, individual officers/staff must be prepared to account for their decisions and to show that they were justified...”

*Specific points of full agreement regarding officers' use of force*

- a. When the pursuer moved his head forward towards PC Donnelly the officer was within his rights to push Mr Lamont away.
- b. Taking hold of the pursuer's arms was with a view to controlling the limbs in order to complete a full handcuff application to the rear. This would be in line with their training (control to handcuff NOT handcuff to control).
- c. The use of handcuffs by PC Horn was a reasonable tactical option and justified by the officers in their evidence.
- d. Due to the active resistance behaviour of the pursuer, both officers visibly struggled to control his arms and to some degree his movement. This was partly caused by the fact that PC Horn was correctly holding onto his handcuffs, and PC Donnelly had hold of the right arm at the bicep rather than the wrist, which would give better control. This made it difficult to get the pursuer's arms behind his back to complete the handcuff manoeuvre.
- e. The officers described the pursuer's active resistance in some detail. This included locking out of arms and legs, pushing against and pulling away from

the officers, turning around and grabbing hold of the railings. This could be difficult to manage without the use of other tactical options to overcome this.

- f. The use of batons to strike the pursuer or irritant spray (PAVA/CS) were not viable tactical options at this point. This was due to the close proximity of each officer and the risk of cross contamination. Further, there was a requirement to disengage to achieve the correct distance to deploy either option. Additionally, the pursuer was demonstrating active resistance not assaultive or serious/aggravated resistance. The listed reasonable officer response for dealing with active resistance suggests officer presence, tactical communications and control skills of empty hand techniques, Module 1 section 10 Student Training Manual. The officers did try these options apart from using strikes on the pursuer.
- g. The application of strikes to the primary muscle groups (primary targets areas), such as the bicep, forearm or thigh, would have been a viable and reasonable tactical option to consider at this point. The officers' efforts to control the pursuer were failing and there was some level of fatigue setting in. The use of strikes could have caused distraction or dysfunction to the pursuer and may have facilitated the handcuffing.
- h. There was no evidence either officer considered such empty hand, or knee strikes as an option. As with any tactical option it was for the officer to decide what was the most appropriate and achievable at the time in that situation and set of circumstances, and they should consider the reasonable officer response options outlined in the use of force training manual.

- i. The attempt by both officers to initially take the pursuer to the ground when he was facing the railings by using their feet and legs to displace the pursuer's balance appeared uncoordinated as both officers were trying to do this at the same time. This appears to be as a result of being unable to place him in handcuffs. While both officers tried slightly different methods, if successful, they would probably have caused the pursuer to drop to his knees in a vertical direction. It is unlikely he would have collided with the railings or moved backwards, but that would potentially increase the risk of injury compared to him remaining standing.
- j. The active resistance of the pursuer grabbing the railings was an escalation of resistance. PC Donnelly could have applied handcuffs to disengage this grip. The fact that another handcuff applied to the other wrist on its own, would not preclude this as they could be joined together to complete the manoeuvre, "daisy chaining" or "back to back interlocked" handcuffing, Module 3 section 5 Student Training Manual. PC Donnelly did not wish to provide the pursuer with another possible weapon as he would have a handcuff on both wrists. Further, as Mr Lamont was wearing a backpack this prevented him using this option, so he discounted that. It was a viable option to daisy chain/back-to-back interlock handcuffs with a backpack being worn.
- k. If a subject were to break free of officers with a handcuff applied to just one wrist, there was a risk that injury can occur. Officers are taught to work as a team and keep control of the handcuff at all times. The officer should not attempt to handcuff a resisting subject until they are in a position of control.

- l. Strikes could have been used to the bicep, forearm or knuckles of the pursuer to dysfunction the arm and facilitate the grip release. A knee strike would also have been an option to dysfunction the leg, possibly causing the subject to drop to the ground and let go of the railing.
- m. In evidence PC Donnelly stated it was his intention to prise the pursuer's fingers from the railings by pulling them back. It appeared from the CCTV footage that he only takes hold of the pursuer's right small pinkie finger. This can be seen being pulled back against the normal range of movement. It is likely to be a more injurious technique if applied incorrectly or where the person has not been made aware of the limitations in relation to distance of travel of the digits. Therefore, an officer would need to balance this increased risk of injury against the perceived threat level.
- n. Officers are taught that the ground is sometimes the safest and best place to fully control a resistive subject and complete full mechanical restraint, particularly with assaultive or serious/aggravated subjects. It is also difficult for just two officers to control the descent of a subject who is offering resistance, without the help of other officers. Whilst this is taught and practiced with an individual officer and in pairs it is normally used with some form of distraction, dysfunction or balance displacement to facilitate the take down. It is accepted that there is an increased risk of losing control and even grip on a subject when dynamically taken to the ground. These risks are included in training and must be balanced against the perceived threat. Coordinated teamwork is emphasised within training for managing the detainee to the ground in a controlled manner.

- o. The eventual decision to take the pursuer to the ground in the manner they did appears to be that they were unable to fully restrain him with the options they had deployed. This would probably have been unnecessary if strikes had been used on him to facilitate handcuffing when standing up against the railings and/or the other attempted techniques had been executed correctly.
- p. Having ended up in a position of disadvantage and being unable to handcuff the pursuer, the officers believed they had very few tactical options left available to restrain him. As they appear to have precluded disengagement so as to use a baton strike or irritant spray, which would have required one or both of them releasing what control they did have of the pursuer, they believed the decision to therefore take him to the floor was their final option. If this was their honest held belief and perception of the level of threat at that time, then it is for the court to decide if this was justified (P.L.A.N.E). This stands for Proportionate, Legal, Accountable, Necessary and Ethical and refers to the requirements for officers to justify any use of force.

*Point of partial agreement with quantifying statements*

[40] It was agreed the officers remained in close proximity to the pursuer to keep him at the railings.

*Ms Caffrey's views*

[41] While the officers were initially dealing with the pursuer they remained within his personal space. Officers are taught the "reaction gap". Officers are taught that when dealing with a subject a working reactionary gap of between 4 to 6 feet should be sufficient

to allow effective communication and at the same time allow the officer to observe the subject's actions and demeanour. They are also taught:

“As well as trying to maintain the reactionary gap, officers should be aware of tactical positioning in relation to a subject and should realise the dangers of standing directly in front of a subject”

Module 2 Student Training Manual. The officers gave justification for remaining in close proximity to the pursuer, and the pursuer gave reasons why this close proximity caused him additional anxiety. Benefits and risks would need to be balanced against threat and policing objectives. PC Horn did indicate to the principle of “contact and cover” and this principle would require only one officer to lead the communication with the pursuer whilst the second officer stands back slightly and ensures safety.

*Mr Graves' views*

[42] While Mr Graves agreed with Ms Caffrey in relation to best practice in respect of the reactionary gap, tactical positioning and “contact and cover” in some circumstances, to maintain control and minimise movement of a subject a closer proximity to them may be required. Officers will balance this increased risk against the objective they are trying to achieve. This can also allow them to quickly get hold of a subject or help in balance where the subject may be intoxicated. While the pursuer stated that this caused him some anxiety, the conversation went on for over 2 minutes and he closed this gap further by pushing his head forward towards PC Donnelly, who reacted by pushing him back.

*Ms Caffrey's opinion*

[43] The minimum use of force would have been handcuffing to a standing subject. Baton strikes and handcuff takedowns both increased risk compared to a standing subject

handcuff technique. The baton can be used to strike or to control and/or takedown a subject. Without having let go of the pursuer PC Donnelly could have considered closed mode arm locks with his baton being placed between the pursuer's upper arm and torso to rotate him from the railings grip, Module 6 Student Training Manual. Use of the baton to primary target areas such as thighs and upper arms are large muscle mass areas and taught as lower risk areas. Joints are higher risk areas due to risk of dislocations. The use of force methodology and the target area should be considered together for risk, and it is not possible to simply state all baton uses are higher risk as it would depend on where it was used, how it was used and vulnerabilities of the subject. An uncontrolled handcuff takedown is likely to be higher risk than a controlled takedown.

[44] While the pursuer was still actively resisting his arrest and resisting the application of handcuffs the officers had other less injurious tactical options available to them to release his grip from the railings such as a bottom cuff wrist drag with use of the rigid handcuff or adapted to a manual handling tactic, arm rotations and/or primary strikes.

[45] One must also consider what active resistance means in police training. A subject profile increases in scale from complaint to verbal resistant, to passive resistant, to active resistant, to assaultive resistant where the subject is assaulting or threatening to attack the officers to serious/aggravated resistant, for example the subject is using/threatening to use weapons. The pursuer was neither assaultive nor serious/aggravated resistant. An active resistant subject is commonly encountered within operational policing and Police Scotland recommend reasonable officer responses for dealing with this subject including tactical communications and empty hand techniques. As he was not being assaultive or aggravated, the officers had time to communicate and control the situation. This was not a close quarter combat self-defence situation for immediate execution of tactics to protect oneself and

overpower a combative threat. The officers did need to obtain compliance but had opportunity to control the momentum. Empty hand techniques, in conjunction with tactical the pursuer safety of officers, subjects and the public.

[46] On viewing the CCTV footage of the pursuer's engagement with the officers, he was initially passive resistant. When he was holding onto the railings and not wanting to go, the pursuer was active resistant. He moved forward towards the officers and an officer pushed him backwards to the railings.

[47] PC Donnelly prised the pursuer's right pinkie from the railings. That was not a taught technique to officers across the UK. The pinkie is not a primary target area because of the joints of the finger and the risk of injury.

[48] The starting principle when trying to arrest or secure a person was to do so with the person standing. If the person is assaultive resistant or serious/aggravated resistant, it may be necessary to take the person to the ground. The person should be taken down to the ground in a controlled manner unless the level of resistance is such that cannot be achieved. An arrest in the standing position is safer for the subject and the officers. Taking a subject to the ground always carries some risk of the subject being hurt. Officers should take down the subject to knees first, then prone rather than face planting to the ground. The intention is that the officer always remains on foot and to avoid "ground grappling" and risks from members of the public when they could not respond to protect themselves. On viewing the CCTV footage, this was an uncontrolled take down.

[49] The pursuer was active resistant. You can facilitate a standing arrest if the officers work as a team, communicating with one another and consequently saying what they are doing and what they are going to do to the subject. There was a lack of coordination in respect of the pursuer. At one point one of the officers was pushing the pursuer and the

other pulling him. The officers were doing different things at the same time. The officers would have been taught to handcuff each wrist separately, especially if the pursuer was “super strong”. One officer would secure the left wrist with a handcuff and place the arm behind the pursuer’s back. The second officer would then secure the right wrist with a handcuff and place the arm behind his back. That did not happen.

[50] Ms Caffrey acknowledged that, on occasion, officers would have to modify control tactics if circumstances dictated. It would then be for the officer to justify the deviation.

Ms Caffrey agreed if the officers had tried and failed with the non-use of force, what was reasonable depended on the individual officer’s perception of threat, if they held an honest belief. It was the officer’s perception which prevailed. The primary aim was to maintain peace and uphold the law. Ms Caffrey also confirmed there were only two risk categories for officers: high risk and risk unknown together with subject profile behaviours as well. There was no category low risk.

[51] On further review of the CCTV footage, Ms Caffrey agreed the pursuer was pulling and pushing the officers before he grabbed the railing. That would be active resistant.

[52] Ms Caffrey accepted if the officers were not able to arrest the pursuer standing it would be reasonable to take him to the ground. That would depend on the officers’ perception in the moment. Further, if the court accepted evidence from the officers that the pursuer was showing “superhuman strength” and the officers had a high level of fear it would be reasonable for the officers to take the pursuer to the ground in the manner shown on the CCTV footage. Techniques had to be modified depending on the circumstances and the context. Where there was a dynamic situation officers required to consider various techniques.

*Mr Martin Graves*

[53] Mr Graves was a former police officer with extensive experience in the use of force by police officers. Mr Graves referred to his report dated 20 February 2023 during his evidence and to the joint expert report prepared with Ms Caffrey.

[54] Officer training in Scotland including use of force training was well known to Mr Graves. Mr Graves was instructed by the chair of the Sheku Bayoh inquiry to review use of force training after the inquiry for police officers in Scotland and across the United Kingdom and made recommendations in respect of improvements to the inquiry.

[55] While classroom training promoted best practice, in real life situations it was not always possible to apply best practice. Police officers had to adapt/make things work. Officers had to try to assess the level of risk (high/unknown) and where dealing with a situation they had not dealt with before, they may well try something from their own experience which might work. It was then for the officer to justify the action taken based around principles and the Operational Safety Training Manual covering use of force.

*Mr Graves' opinion*

[56] Mr Graves adopted the opinion he expressed in the Joint Expert Witness Report:

“We must always remember that the nature of policing is as diverse as the behaviour of the individual’s officers have to deal with and as such it is impossible to train tactics for every set of circumstances. For this reason, there will always be occasions then officers resort to tactics or techniques not included in their training or described in any manual. In such circumstances, the actions of the officer will not necessarily be wrong or unlawful, provided they have acted reasonably, within the law and can provide adequate justification for their actions.”

- a. The accounts given by the officers show that the initial interjection with the pursuer was reasonable, necessary and proportionate to prevent a breach of the peace. They gave him ample time to provide his details and was warned that

he could be arrested, and force may be used if he did not comply. Due to the resistance of the pursuer visible on the footage, the officers perceived level of threat was high enough to warrant them placing him in handcuffs. The subsequent use of force to restrain the pursuer was as a direct result of this resistance.

- b. To access any equipment, such as a baton, the officers would have to relinquish a degree of control of the pursuer by letting go with one hand as the baton is normally held either on their vest or equipment belt. With their lack of communication if both officers had done this then it is most likely they would have lost complete control of the pursuer. These were all options that 'could' have been used but the officers either did not consider them or precluded them due to the pursuer's resistance.
- c. The take down was controlled to some degree by the officer having hold of the pursuer's arms, but his decent could have been slowed if they had had hold of him under the shoulders.
- d. Baton strikes and handcuff take downs both have a higher risk of injury than what was used on the pursuer. The end result or actual injury sustained should not, on its own, dictate whether the force used was excessive or unnecessary.
- e. In essence, the officers had to get the pursuer's hand off the railing, without this they could not have completed the handcuff technique. With his continued resistance and refusal to comply with the direction of the officers, what PC Donnelly did was justifiable, however unfortunate the actual end result was. Considering PC Donnelly's other options such as striking the

subject, it is my opinion that to prise the subjects' fingers from the railing was not only the least intrusive use of force available but a sound and appropriate tactical option, faced with the situation he was in and the level of resistance the pursuer was offering.

- f. There is a distinct separation between the initial contact and control of a subject to that of full restraint. It can, on occasions, take some time to control a violent or actively resistive subject before they can be placed under physical restraint or in mechanical restraints.
- g. The restraint of a subject by one or even two officers is problematic and can lead to the use of other tactical options such as strikes, joint locks or other pain compliance techniques to establish control. The threat or representation of using a specific item of work equipment (batons or irritant/incapacitant spray) may also be utilised.
- h. The control and restraint of violent or potentially resistive subjects is usually a fluid and dynamic process, which often ends up with one or more parties on the ground. The reasons for this are twofold. Firstly, gravity will prevail in fast-moving incidents where one's balance is lost or deliberately taken away by an officer (press down, leg sweep, trip etc). Secondly, the ground is often the safest place for all to achieve control and subsequent full restraint of a violent or resistive subject.
- i. In potentially volatile situations officers can build up a degree of stress. This is particularly relevant in fast-moving situation that can develop in very quick time. During any such encounter, officers experience physical changes which

occur during stressful situations and impact on cognitive ability, such as judgment, decision-making, time distortion and fine motor skills.

j. There are a number of physiological and psychological effects, the main ones being:

- auditory exclusion (although things are said the person may not hear it)
- perceptual narrowing or “tunnel vision” (only what is in front of the person
  - perceptions may be processed or fixated on)
- perceptions alter (estimates on size, time, level of threat etc).
- performance (ability to perform fine and complex activities reduces)
- rational thought (ability to produce rational decisions including
  - communicate normally, rather than act instinctively)
- using more reactive or “natural” responses rather than those learnt during training

k. Such incidents can affect officers in different ways. This can depend on a number of factors, such as:

- Their experience in similar situations
- Their current state of mind
- How aware or “switched on” they were at that point
- Fitness levels
- their perceptions as to the level of danger they faced
- Even a very experienced officer can suffer such symptoms during an event even where others may believe the incident to be “routine”.

- l. The application of tactics during training is very different to their use during operational deployment. The stresses on an officer are much greater in the operational environment, the risks are real and the behaviour of individuals can be much more violent and unpredictable. Under these conditions an officer's ability to perform complex tasks or produce cognitive thought processes diminishes with increased heart rate.
- m. In his opinion the force used was minimal, lawful in the circumstances that the officers found themselves in and although the specific techniques used were not included in the training provided to the officers, it was within the scope of Police Scotland's use of Force policy and the lawful execution of their duties and the arrest of Mr Lamont.

[57] At page 17 of his report, paragraph j, Mr Graves addressed the injury to the pursuer's right pinkie. His position in the report and, initially, when giving evidence was that PC Donnelly was wearing gloves and had taken hold of four fingers not solely the pinkie. On review of the CCTV footage, Mr Graves accepted PC Donnelly was not wearing gloves and had only pulled the pinkie. Mr Graves agreed by pulling only one finger the likelihood of injury was greatly heightened. The principal was PLANE in the context of what the officers genuinely believed in the situation they were in ie their perception, and what level or potential level for injury was proportionate to what they were trying to achieve.

[58] In respect of the knee injury, the best option was to take the pursuer to the ground when he was removed from the railings. The lack of control in the circumstances did not make the use of force excessive. In his opinion, there was nothing in the actions of the officers which amounted to excessive force.

## **Submissions**

### *Submissions for pursuer*

#### *Motion*

[59] The motion for the pursuer was to find the defender liable to make reparation in respect of both the injury sustained to the right hand little finger and the left knee and to grant decree against the defender in the sum of £43,000 net of CRU and inclusive of interest to the date of decree.

[60] Esto the court was not satisfied the defender was liable to make reparation to the pursuer in respect of both injuries, but the court is satisfied the pursuer is entitled to reparation for one of the injuries, the court should grant decree for the agreed sums in respect of whichever injury the court holds the defender is liable.

#### *General submissions*

[61] The pursuer's case was that he was assaulted by police officers during the course of his arrest. The force used by the police officers was unreasonable, disproportionate and unnecessary and in the circumstances their actions and conduct were wrongful, not justified in the circumstances and they acted with malice.

[62] The defender's case was that the police officers' actions were necessary, proportionate and reasonable.

#### *Primary liability*

[63] There was no dispute as to the applicable law.

[64] The starting point is that police officers are entitled to use force when necessary, in the discharge of their duties. As Chief Constable, the defender is vicariously liable for the actions of her police officers on duty.

[65] The application of any intentional hostile force amounts to an assault unless legal justification for it can be shown, *Minio Paluello v Commissioner of Police of the Metropolis* 2011 EWHC 3411 at paragraph 4. It is an overt physical act intended to insult another and committed without lawful justification or excuse. *McCallum v Morrison* 2023 SLT 119 at paragraphs 30 and 33.

[66] To succeed with a case of assault on the part of a police officer on duty it is necessary for the pursuer to aver either (i) that the order which the police officer was seeking to enforce was unlawful; or (ii) that the pursuer was willing to comply with the order, in which case the use of force would be unnecessary; or (iii) that the force used was manifestly in excess of the requirements of the case *Mason v Orr* (1901) 4F 220 per Lord McLaren at p223.

[67] The pursuer submitted in the present circumstances the force used was manifestly in excess of the requirements of the case.

[68] In relation to a case of assault, the defender requires to prove that the force used by the police officers was reasonable in all the circumstances. That requirement involves an assessment of the proportionality of the force used. The issue is not just whether the use of force was reasonable in all the circumstances as the police officers believed them to be. The question is whether the degree and nature of the force used was reasonable. An assessment of the reasonableness of the force used must involve a consideration of how proportionate that response was to the overall circumstances facing the two police officers *Afriyie v*

*Commissioner of the City of London Police* 2024 EWCA Civ 1269 per William Davis LJ at paragraph 34.

[69] To succeed with a case in negligence in relation to the wrongful actions of the police officers, the burden of proof is on the pursuer. The pursuer requires to show that where an act is within the competence of a police officer, that he sustained injury due to actings of the police which were malicious and without probable cause. Malice can be inferred from recklessness *Robertson v Keith* 1936 SC 29 per Lord Justice Clerk Aitchison at p46-47; *Ward v Chief Constable Strathclyde Police* 1991 SLT 292 per Lord President Hope at p294I-J.

#### *Use of force*

[70] The expert witnesses Ms Caffrey and Mr Graves were in agreement that the requirements for police officers to justify force was encapsulated by PLANE which stands for Proportionate, Legal, Accountable, Necessary and Ethical.

#### *Removal of the pursuer's hand from the railings by PC Donnelly*

[71] In determining the question of liability, the court should take into account:

- a) the degree of the force used, namely the extent to which his little finger was pulled back by PC Donnelly;
- b) the gravity of the offence for which he was being arrested, namely that it was for a minor criminal offence, a breach of the peace;
- c) the scale of resistance being displayed by the pursuer. Both expert witnesses agreed that the pursuer was displaying active resistance, but he did not display assaultive or a serious/aggravated resistance. Both PC Donnelly and PC Horn also both referred to the term active resistance in relation to the pursuer; and

- d) the harm that flows from the use of the force against the pursuer, with the defender's own expert witness stating that likelihood of injury was "greatly heightened" by the fact that only one finger was pulled back, and that the little finger was the weakest of the fingers.

[72] The court should hold the pursuer was assaulted by PC Donnelly resulting in the injury to his right pinkie. The force used was disproportionate, excessive and unnecessary. As seen on the CCTV footage, given the manner in which PC Donnelly took hold of the pursuer's finger, the court should hold it was PC Donnelly's intention to injure the pursuer.

[73] The actions of PC Donnelly were wrongful, malicious and without probable cause. Malice can be inferred from recklessness. The manner in which PC Donnelly took a grip of the pursuer's finger and pulled it back demonstrated either an intention to injure or recklessness as whether injury was suffered by the pursuer. PC Donnelly demonstrated malice towards the pursuer.

*Taking the pursuer to the ground by PC Horn*

[74] The pursuer submitted the arrest ought to have been executed while he was in a standing position. It was disproportionate, excessive and unnecessary to take him to the ground.

[75] However, Ms Caffrey accepted in evidence if the court were to accept evidence that the pursuer was displaying superhuman strength, that if the police officers had a high level of fear and that the two police officers could not arrest the pursuer whilst he was standing, that it would be reasonable to take the pursuer to the ground.

[76] The officers gave evidence the pursuer was showing superhuman strength and had great strength and that they were scared and exhausted.

[77] The court should reject the evidence of PC Donnelly and PC Horn regarding the extent of the strength and resistance being displayed by the pursuer at the time that PC Horn took him to the ground with a leg sweep.

[78] Both police officers had already attempted to bring the pursuer to the ground whilst he was standing at the railing by kicking at his legs, before the attempt by PC Horn to undertake a leg sweep. PC Horn stated in cross-examination that he had attempted a leg sweep whilst the pursuer was holding onto the railing. As such, the leg sweep was attempted before the police officers had sought to restrain the pursuer by releasing his grip on the handrail. It was not a last resort due to the failure of other techniques.

[79] The court should hold that the pursuer was assaulted by PC Horn resulting in the injury to his knee. The force used was manifestly in excess of the officers' requirements. It was disproportionate, excessive and unnecessary. The police officer ought to have arrested the pursuer in a standing position.

[80] The court should hold that injury was caused by the actions of PC Horn which were wrongful, malicious and without probable cause. Malice can be inferred from recklessness. He took the pursuer to the ground in an uncontrolled manner by way of a technique that was not recognised. It was disproportionate, excessive and unnecessary. It demonstrated either an intention to injure or recklessness as whether injury was suffered by the Pursuer. As such, PC Horn demonstrated malice towards the pursuer.

### *Contributory negligence*

[81] The burden of proof was on the defender in respect of contributory negligence. The pursuer submitted there was no contributory negligence in this case.

[82] If the court considered that a reduction in damages was appropriate in the circumstances due to contributory negligence, it should be a modest reduction, such as 10%.

### *Quantum*

[83] Parties agreed quantum, subject to all arguments on primary liability and contributory negligence:

- a. in the event of the defender being found liable to make reparation to the pursuer in respect of the removal of his hand from the railing only, resulting in a displaced fracture of the proximal phalanx of his right little finger, in the sum of £12,000 net of any liability that the defender may have in terms of section 6 of the Social Security (Recovery of Benefits) Act 1997, inclusive of interest to the date of decree.
- b. in the event of the defender being found liable to make reparation to the pursuer in respect of the taking of him to the ground only, resulting in a displaced left lateral tibial plateau fracture in the sum of £38,000 net of any liability that the defender may have in terms of section 6 of the Social Security (Recovery of Benefits) Act 1997, inclusive of interest to the date of decree
- c. in the event of the defender being found liable to make reparation to the pursuer in respect of both the removal of his hand from the railing and the taking of him to the ground, resulting in the displaced left lateral tibial plateau fracture and the displaced fracture of the proximal phalanx of his right little finger in the sum of £43,000 net of any liability that the defender may have in terms of section 6 of the Social Security (Recovery of Benefits) Act 1997, inclusive of interest to the date of decree.

## **Submissions for the defender**

### *Motion*

[84] The defender for the defender was to grant decree of absolvitor.

### *General submissions*

[85] The defender accepted that PC Donnelly and PC Horn owed the pursuer a duty of care during their interactions with him on 22 December 2018. The duty extended only to exercising such care and skill as was reasonable in all the circumstances.

[86] That use of force requires to be the minimum force required to achieve a lawful objective. There is no dispute that the arrest of the pursuer was a lawful objective. As such, the only question is whether the officers used more than the minimum force required to arrest him.

[87] Circumstances ought not to be judged in a truly objective sense, nor with the application of hindsight. Instead, they should be judged by considering first what the officers subjectively perceived at the time and second whether their actions taken in response to those perceptions were actions which were objectively reasonable.

[88] Unless the court doubts the veracity, the court should not start by considering whether the officers' subjective perceptions, which they experienced in the heat of the moment, were objectively reasonable. It was impossible for the court to insert itself into the moment and experience what the officers felt at the time. In the absence of any contrary evidence about those perceptions, the court should accept the officers' accounts as credible and reliable. Having accepted those, the question to be addressed was whether the actions taken in response to those perceptions were objectively reasonable in all the circumstances.

[89] Both Ms Caffrey and Mr Graves agreed that what was reasonable in any given situation depended upon an officer's honestly held belief about the situation and the perceived level of threat. Their joint position was that it was an officer's perception which determined whether their actions were reasonable.

[90] The officers found themselves in a dynamic situation brought about by the actions and hostility of the pursuer who was drunken and belligerent. The officers spoke of his immediate hostility towards them, his lack of compliance with their requests, his aggressive nature, his moving forward into the officers' personal space, his tensed arms, his superhuman strength, their fatigue and exhaustion caused by his resistance, as well as their concerns for their personal safety and that of others given the location and the night time economy. The pursuer's colleague, Stuart Murray, confirmed the many times that he told the pursuer to calm down, during both his initial discussions with the officers and when being restrained. Taking all these factors into account as part of the dynamic circumstances in which the officers were acting, the court should not impose too high a standard upon them.

[91] The experts agreed that the training provided to an officer requires to be flexible, with the need to adapt it in real-world scenarios. The pursuer's actions placed the officers in a situation which they had not been trained to deal with. Given the resistance displayed by the pursuer, the officers' increasing exhaustion, and their inability to continue the struggle for much longer, the court should be slow to criticise PC Donnelly's actions in removing the pursuer's grip. Whilst PC Donnelly's execution might have been better, that did not render his actions unreasonable.

[92] PC Donnelly's evidence was that he thought he did pull all the pursuer's fingers and that was his intention. He would not intentionally go out to pull only one finger as that

would not achieve its purpose. His evidence was that he attempted to move the pursuer's index finger to gain access to all his fingers and that he would not expect the pursuer's grip to be released by pulling on only one finger. If the court accepted his account that he intended to pull all four fingers, notwithstanding that he ended up only pulling one, the court should not criticise him. Such action by PC Donnelly would fall far short of negligence given the dynamic circumstances in which he acted.

[93] Even if the court finds, contrary to the evidence, that PC Donnelly intended to pull only one finger that was not enough for the pursuer to succeed. The court would also have to find that PC Donnelly knew or ought to have known that pulling only one finger increased the risk of injury compared to pulling all four and would therefore constitute excessive force. There is no evidence to support such a finding. PC Donnelly was not asked to comment upon this, and neither was any other witness.

[94] Alternatively, the court might find that PC Donnelly knew what he was doing and that he pulled only one finger with the deliberate intention of causing harm. The evidence did not support such a finding.

[95] In all the circumstances, PC Donnelly's actions in releasing the pursuer's grip were reasonable. The force he used was reasonable. Given the handcuff on the pursuer's left wrist, there was an urgent need to secure his right wrist. That could not be done whilst the pursuer held the railings. Neither officer had received training in how to release such a grip. PC Donnelly did what he considered to be best in the circumstances. That he might have better executed his attempt does not render his execution negligent. The only alternative method of grip release involved attaching another handcuff to the pursuer's right wrist and both officers had already discounted doing so, and for good reason. PC Donnelly's actions were fully supported by Mr Graves. In any event, PC Donnelly's actions would not have

been required had the pursuer not held the railings to actively resist arrest, or if he had let go of them when instructed to do so.

### *Knee*

[96] The pursuer's leg injury was caused by the pursuer being taken to the ground for the purposes of effecting an arrest.

[97] The evidence of both officers was that they were unable to secure the pursuer's handcuffs whilst he remained standing. Notwithstanding Ms Caffrey's evidence that they ought to have been able to do so, she was not present in the moment. Her evidence came to be that if the court accepted the officers' subjective perceptions of the need to take the pursuer to the ground because they could not secure him in a standing position, then the force they used in taking him to the ground was reasonable. Mr Graves supported the officers' decision to take the pursuer to the ground as one that was reasonable. He considered that the force they used in taking him down was reasonable.

[98] The court should accept the officers' perceptions that in all the circumstances they required to take the pursuer to the ground to secure him. The court should find that it was reasonable to have done so, and the use of force applied in doing so was reasonable.

### *Contributory negligence*

[99] It was accepted that the arrest involved a foreseeable risk of injury, but it was only a risk which arose because of the actions of the pursuer. Had he complied with the officers' requests for his particulars, he would have been sent on his way without arrest. Having refused to provide his particulars and then having actively resisted arrest, the pursuer created a risk of being injured. One cannot voluntarily struggle with police officers during

an arrest and expect not to risk injury. It was the pursuer, not the officers, who created the risk of him being injured. The conduct of the pursuer in this case merits a high deduction.

[100] If the court finds that decree ought to be pronounced in favour of the pursuer, the court was invited to discount the agreed damages by 80% in recognition of the pursuer's contribution to the events giving rise to his injuries.

#### **Note**

[101] Parties were agreed as to the applicable law. Police officers are entitled to use force, when necessary, in the discharge of their duties. The defender is vicariously liable for the actions of police officers in the course of their duties.

[102] The Operational Safety Training Manual for police officers – Module 1 Use of Force at section 2 states:

“Any force used must be proportionate, legal, accountable, necessary and ethical in the circumstances and the minimum amount necessary to accomplish the lawful objective concerned.

Action must be proportionate in relation to the competing rights of a subject and any force used should be no more than is absolutely necessary in this regard, individual officers/staff must be prepared to account for their decisions and to show that they were justified...”

[103] Counsel for both parties and the expert witnesses Ms Caffrey and Mr Graves agreed with that statement as the definition of the use of force.

[104] The arrest of the pursuer was lawful. The pursuer avers he was assaulted by the police officers. The onus is on the officers to prove that the use of force was reasonable in all the circumstances.

[105] Most of the evidence in this case was about the use of force by PC Donnelly and PC Horn towards the pursuer around 3.00am on 22 December 2018 in Glasgow City Centre outside Blue Dog Bar in West George Street, Glasgow.

[106] I have set out in detail the opinion evidence of the two expert witnesses Ms Caffrey and Mr Graves to demonstrate the wide range of factors considered in respect of the use of force, police officer training and the application of that training to the facts and circumstances of what happened in the early hours of 22 December 2018.

### *Witnesses*

[107] The pursuer did his best to tell the truth, but his recollection was hazy after he was arrested and the events leading to the pursuer being taken to the ground. That was understandable as he was in significant pain following the fracture of his right little finger.

[108] The pursuer's colleague and friend, Stuart Murray was of assistance in providing independent context to what was taking place between the officers and the pursuer.

[109] I had some difficulty with the evidence of PC Donnelly. At times, I formed an unfavourable impression of his answers to questions. PC Donnelly was an inexperienced officer in December 2018 but purported to be more experienced. At times, he came across as being arrogant and dismissive. PC Donnelly demonstrated, by use of a court microphone, how he had grabbed the fingers of the right hand of the pursuer to remove the pursuer's hand from the railings. This all seemed to be theatrical and unnecessary.

[110] As for PC Horn I formed a generally favourable impression of the officer. PC Horn appeared to be trying to do his best when the incident escalated. He was attempting to get an escalating situation under control. While there may have been some failings in so doing,

I felt his intentions were genuine to protect the safety of the pursuer, PC Donnelly, himself and members of the public.

[111] Ms Caffrey had impressive credentials in all aspects of the use of force. Ms Caffrey produced a comprehensive, perhaps elaborate, report extending to 92 pages including multiple Source Documents. There had to be a balance between any training as a counsel of perfection and officers managing dynamic situations on the ground where they may have had little or no previous experience.

[112] Mr Martin Graves had impressive credentials and could speak authoritatively about the use of force. Mr Graves report extended to about 45 pages with various appendices and a variety of documents considered. Mr Graves adopted a much more informal approach to the use of force by officers, having appropriate consideration to training but that a reasonable response and appropriate use of force would allow for officers to use their experience of life in other non-police situations. His opinion on the use of force in real life situations did not always sit easily with the formal training of officers.

*Right little finger injury*

[113] The whole incident was captured on CCTV. The footage was from different viewpoints, including zoomed-in footage of the pursuer's right hand being removed from the railings by PC Donnelly. The footage needs to be considered alongside all the witness evidence and acknowledging there is no sound.

[114] When the officers initially engaged with the pursuer, he was passive resistant. The pursuer did not wish to provide his particulars to the officers as his position was, he had done nothing wrong. As the incident escalated with the pursuer continuing to refuse to provide his particulars and leading to his arrest, the pursuer was active resistant. When the

pursuer grabbed hold of the railings with his right hand and not wanting to release his hand, the pursuer was active resistant. While at the railings, the pursuer moved forward towards the officers, and he had to be pushed back to the railings.

[115] I did not accept as credible PC Donnelly's explanation of how he removed the pursuer's hand from the railings. The physical demonstration in court, with PC Donnelly using the microphone as a prop to show how he grabbed the pursuer's fingers, was underwhelming.

[116] While I gave careful consideration to all the witness evidence and, in particular, what PC Donnelly had to say, on looking at the zoomed-in footage of PC Donnelly removing the pursuer's right hand from the railings, in my view PC Donnelly deliberately targeted the pursuer's right little finger, pulling the little finger all the way back and in so doing breaking the little finger. PC Donnelly made no attempt at all to grab any of the pursuer's other fingers on the right hand in order to remove the right hand from the railings.

[117] Mr Graves, in his report, and initially in evidence, said that PC Donnelly was wearing gloves and had taken hold of four fingers, not solely the pursuer's right little finger. I dismissed that evidence as not credible. It was only after a review of the CCTV footage and some prompting, including prompting from the court, that Mr Graves accepted PC Donnelly was not wearing gloves and had only pulled the pursuer's right little finger. I found that passage of evidence from Mr Graves unsatisfactory and not helpful to the court.

[118] On the balance of probabilities, the pursuer was assaulted by PC Donnelly when he removed the pursuer's right hand from the railings. In prising the pursuer's right little finger from the railings that was not a recognised Operational Safety Training technique. The use of force by PC Donnelly was unjustified and not reasonable. PC Donnelly deliberately pulled back the right little finger to such a degree that the pursuer sustained a

fracture of the proximal phalanx of the right little finger. On the balance of probabilities, there was a deliberate intention on the part of PC Donnelly to cause harm to the pursuer.

*Knee injury*

[119] The circumstances in respect of the knee injury are different. By this time, the pursuer was in significant pain with his right little finger fractured, and he had little recollection of what happened leading to him being taken to the ground. The CCTV footage was of assistance, but the evidence of PC Donnelly and PC Horn was critical to the context.

[120] The court must decide objectively if each of the officers held an honest belief and perception of the level of threat from the pursuer at the time and that the decision to take the pursuer to the ground was their only option. The court must then go on to decide if the force used was reasonable, PLANE that is, Proportionate, Legal, Accountable, Necessary and Ethical.

[121] PC Horn gave a compelling account of the officers not being able to arrest the pursuer in a standing position and that they had to take him to the ground for his own safety and the safety of the officers. I accepted as credible PC Horn's perception of the pursuer exhibiting superhuman strength, causing PC Horn to feel scared for his own safety coupled with fatigue and exhaustion caused by the pursuer's continuing resistance.

[122] While I had some reservations about PC Donnelly describing himself as being in a state of jeopardy, on balance, I was prepared to accept as credible his perception of the pursuer showing superhuman strength, that he was scared for his own safety, and that by the time the pursuer was taken to the ground his energy levels were depleted and he was exhausted.

[123] The officers were faced with having to make a dynamic assessment of an escalating situation. Applying an objective test, both officers held an honest belief and perception of the level of threat posed by the pursuer at that time. The pursuer was showing superhuman strength and the officers were feeling fatigue. The decision to take the pursuer to the ground was reasonable.

[124] The footage suggests the efforts of the officers to take the pursuer to the ground were uncoordinated and not in a controlled manner, but I am not persuaded the force used by the officers was not reasonable in all the circumstances.

### **Decision**

[125] I find the defender vicariously liable at common law to make reparation to the pursuer in respect of PC Donnelly's actions to remove the pursuer's right hand from the railings resulting in a displaced fracture of the proximal phalanx of his right little finger.

[126] PC Donnelly failed to use a recognised Operational Safety Training technique to remove the pursuer's right hand from the railings. The use of force by PC Donnelly by pulling back the pursuer's right little finger causing a fracture was not reasonable.

PC Donnelly assaulted the pursuer.

[127] The pursuer was active resistant. At no time was the pursuer assaultive resistant, assaulting or threatening to attack the officer. On the evidence I have accepted, the defender has failed to prove any contributory negligence on the part of the pursuer on the balance of probabilities.

[128] I will grant decree against the defender for payment to the pursuer in the sum of £12,000 net of any liability that the defender may have in terms of section 6 of the Social Security (Recovery Benefits) Act 1997, inclusive of interest to the date of decree.

[129] All questions of expenses are reserved. The sheriff clerk will fix a hearing on expenses.