

In the High Court of Justice
High Court Appeal Centre Bristol
On appeal from the Bristol County Court
Judgment of HHJ Ralton dated 26th January 2021
County Court case number: E01BS396
Appeal ref: 11BS019C

BETWEEN

1. Michael Overd
2. Michael Stockwell
3. Don Karns
4. Adrian Clark

Claimants and Appellants

and

The Chief Constable of Avon and Somerset

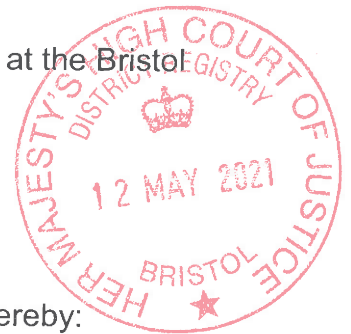
Defendant and Respondent

ORDER

Before **the Honourable Mr Justice Henshaw** sitting in private at the Bristol
Civil Justice Centre on the 12th day of May 2021

IT IS ORDERED THAT

1. The Appellants' application for permission to appeal is hereby:
 - a) granted as to Grounds 1-5, insofar as they relate to the lawfulness of the Claimants' arrests and their claims for breach of Convention rights in that regard;
 - b) granted as to Ground 9, insofar as it relates to the lawfulness of the First Claimant's arrest on 19 August 2017 (Particulars of Claim § 31(f)(ii)) and the dispersal orders referred to in Particulars of Claim § 31(f)(i), (iii) and (iv)), and his claims for breach of Convention rights in connection with those matters, but otherwise refused as to Ground 9;
 - c) refused insofar as they relate to the Claimants' claims for detention in custody, malicious prosecution and misfeasance in public office; and
 - d) refused as to Grounds 6, 7 and 8.



2. Reasons/observations:

- i. HHJ Ralton's Judgment contains a very clear, careful and thoughtful analysis of the legal principles involved, including the need to read the public order legislation involved in a manner consistent with Convention rights (specifically, here, Articles 9 and 10) and the significant decisions in *Brutus v Cozens* [1973] AC 854, *Redmond-Bate v DPP* [2000] HLRL 249 and *Abdul v DPP* [2011] EWHC 247 (Div. Ct).
- ii. The Judgment also rightly emphasizes the difficulties sometimes encountered in making operational decisions in the face of unplanned and potentially dangerous situations.
- iii. It nonetheless seems to me that the Claimants have a real prospect of success (within the meaning of CPR 52.6(1)(a)) on their contention that the very limited second-hand information which the arresting officers had about the actual contents of the Claimants' speeches, as referred to in Judgment §§ 31-34, did not provide grounds for reasonable suspicion that the Claimants were committing or had committed a racially or religiously aggravated public order offence. Further (though the preceding point does not depend on this), the matters referred to in Judgment § 38 arguably suggest that, rather than this being a case of the Claimants' speech being so provocative that members of the crowd might "*without behaving wholly unreasonably*" be moved to violence (*Redmond-Bate*), the main problem lay with a number of audience members already known to be dangerous who were themselves liable to instigate unlawful violence.
- iv. It is further arguable that a Convention-compliant approach requires similar considerations to be applied when considering whether it was lawful to require the Claimants' names and addresses pursuant to section 50 of the Police Reform Act 2002, or (at least on previous occasions) to issue a dispersal notice pursuant to section 35 of the Anti-Social Behaviour Crime and Policing Act 2014.
- v. If, on the other hand, there was a reasonable suspicion that the Claimants were committing or had committed an offence, I do not consider it arguable that the Judge was wrong to conclude that it was necessary to arrest the Claimants (Ground 6).
- vi. I do not consider the Judge's conclusions on detention in custody (Ground 7), malicious prosecution or malfeasance in public office to be arguably wrong, even if the arrests were unlawful.

- vii. The Judge was not arguably wrong to conclude that the First Claimant's second arrest, by PC Price, was not challenged in his Particulars of Claim. The general wording in Particulars of Claim § 32(1) and (2) is not sufficient for that purpose, in circumstances where that particular arrest was not set out in the preceding specific factual averments.
- viii. As to the First Claimant's complaints regarding previous incidents (Ground 9), any Human Rights Act claim in relation to most of those would be time-barred. As to the more recent ones referred to in Particulars of Claim § 31(f), the Judge sets out the facts very briefly in Judgment §§ 80, 81, 82 and 84 and then concludes at § 100 that the First Claimant's rights had not been infringed. I find it difficult to be sure from § 100 on what precise basis that conclusion is drawn, bearing in mind that the incidents in question involved the First Claimant being (a) arrested or (b) made the subject of a dispersal notice, which would require (respectively) (a) reasonable suspicion of an arrestable offence or (b) reasonable grounds to think the notice necessary to remove/reduce the likelihood of harassment, alarm, distress or disorder, having particular regard to Article 10 and 11 rights. With some reluctance (bearing in mind the potential expansion in scope of the appeal), I feel bound to conclude that those particular claims are also arguable.
3. This appeal will be heard before a High Court Judge at the Bristol District Registry at 10.30 a.m. with a time estimate of 1.5 days on a date to be fixed. ***Parties to file dates if availability for the month of July 2021 until the end of year, by 4:00PM on 18 June 2021***
4. The appellant must file, within 35 days of service of this order, a full appeal bundle, which must contain the documents specified in PD 52B para 6.4(1) and may contain any relevant documents specified in PD 52B para 6.4(2). In particular the bundle must include a transcript of the judgment. The appeal bundle must be paginated and indexed, and must contain only those documents which are relevant to the appeal.