Neutral Citation Number: [2023] EWHC 1496 (KB)

Case No: QA-2022-BHM-000003

IN THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY
ON APPEAL FROM THE COUNTY COURT AT CHESTERFIELD
HHJ COE KC

Birmingham Civil Justice Centre
The Priory Courts, 33 Bull Street
Birmingham, B4 6DS

Date: 19/06/2023

Before :

MR JUSTICE FREEDMAN

- -

Between :

ALEXIS KARALIS

Appellant

- and –

THE CHIEF CONSTABLE OF DERBYSHIRE CONSTABULARY

Respondent

- -
- -

Ms Una Morris and Mr Alex Schymyck (instructed by **DPP Law**) for the **Appellant**
Ms Beatrice Collier (instructed by **East Midlands Police Legal Services**) for the **Respondent**

Hearing dates: **14, 23 and 24 February 2023**

- -

Approved Judgment

This judgment was handed down remotely at 12noon on 19 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JUSTICE FREEDMAN :

I Introduction

1. By way of a Claim Form issued on 27 June 2017, the Appellant brought proceedings against the Respondent, claiming damages, including aggravated and exemplary damages, for false imprisonment and assault and battery, in respect of his arrest and detention on 10 June 2014.

2. For various reasons, including the pandemic, the trial of the action was listed, vacated and relisted on a number of occasions. It finally took place between 24 and 31 January 2022 before Her Honour Judge Coe KC ("the Judge"). From 24 January 2022, the Judge sat with a jury, until the jury was discharged on 28 January 2022 by consent. On 31 January 2022, the Judge sat alone, and the trial concluded in an order of the same date.

3. The Appellant succeeded in false imprisonment in a limited respect, specifically in relation to a failure to comply with section 28 of the Police and Criminal Evidence Act 1984 ("PACE 1984"), as although he had been informed that he was under arrest, the arresting officer, PC Sanders, had failed to provide him with the grounds for the arrest. It was conceded by the Respondent only following PC Sanders' evidence that the arrest was therefore unlawful. On 31 January 2022, the Judge found that the Appellant was unlawfully detained for a period of 45-50 minutes and awarded him the sum of £750.

4. In all other respects, the Appellant did not succeed in his claim in false imprisonment. His assault and battery claim, which was wholly parasitic on the false imprisonment claim and therefore depended on a finding that he was unlawfully detained at the material time, was dismissed.

5. In respect of costs, the Judge ordered that the Appellant pay 80% of the Respondent's costs and the Respondent pay 20% of the Appellant's costs of the action, to be assessed by way of detailed assessment, if not agreed.

6. Although permission to appeal was refused by the Judge and on paper, permission was granted by Mr Justice Martin Spencer at an oral hearing on 27 October 2022 on four grounds to which reference will be made.

II The evidence relating to the complaint

7. On 24 May 2014, an offence of rape was reported to the police. The Complainant, a woman, had been with a friend, another woman, when they had got into a vehicle with two men, who were previously unknown to them. The Complainant alleged that she had been digitally penetrated by the passenger of the vehicle who was wearing a red top and then orally and vaginally raped by him in a caravan. The friend made a witness statement on the same day to the police in which she said:

> *"The male in the red top told me to get in the front and he got into the back with [the Complainant]. The driver I would describe as a white male of 5'6" to 5'7" in height and between*

> *23 to 24 years of age. He had unkempt shaven hair possibly a number 2, I can't recall his clothing. I didn't notice any distinguishing features, he had an accent and I thought he sounded like he was from Poland but as he drove he said he was from Russia.*
>
> *The male in the red jumper was also white he was shorter than the other male but I'm not sure by how much he had blonde hair also shaven possibly between a 2 or a 3. He was of average build and wore a red short sleeve top with writing on the front. Don't know what it said. I think he was wearing jeans but I'm not 100% sure. He did try and tell me his age but I wasn't listening properly and so he told [the Complainant] he was 22.*
>
> *…as we drove over the bridge the two males spoke with each other in there (sic) own language. They did try and speak with us in the car but with a combination of their accents and the drink I didn't understand them."*

8. On 25 May 2014, a statement was taken from the Complainant who said the following:

> *"…they were talking in their own language to each other I said where are you from and they said Russia so I'm guessing they're Russian but they could be lying about it. I don't know.*
>
> *…*
>
> *[The Complainant] described the passenger male who did all this to her as white, about 22/23 years old, 5'3" or 5'4" tall, skinny build with blonde short hair. She stated he either had gaps or dark patches between all of his teeth and was wearing a red short sleeved round necked top with white writing on it, blue jeans and she thinks he was wearing a gold chain around his neck.*
>
> *[The Complainant] stated that she couldn't remember what underwear or footwear the male was wearing. She stated his hair was shorter around the sides than it was on top.*
>
> *[The Complainant] described the driver of the vehicle as having white, slightly tanned skin, approximately late 20s or 30 in age with brown hair, dark trimmed facial hair and wearing a blue top, dark coloured jeans and a chain around his neck. She stated he was a bigger build than the passenger, approximately 14/15 stated he was bigger build than the passenger, approximately 14/15 stone in weight. She stated he was carrying a set of keys and there were 2 car keys with the*

buttons on and the plastic bit was black, a couple of other keys and a couple of key rings."

9. The transcript also includes the following:

> "PC WOOD *I know you said you don't know what this accent was but could you say whether it was local or a foreign accent?*
>
> [the Complainant] *It was foreign.*
>
> PC WOOD *Can you expand on that anymore?*
>
> [the Complainant] *Well I've had a Polish friend before and it sounded different to her accent."*

10. On 27 May 2014, DCP made a statement about the sale of BMW vehicle on 20 May 2014 in which he described selling a BMW vehicle. Three men were identified by him as being involved in the purchase. There was a male in his late 20s shorter than 6 foot and quite stocky with dark short hair. He had an accent and spoke with broken English, but he might have been Polish. In a statement on 6 June 2014, he stated that he had been shown a photograph which he believed could have been the male from his previous statement. *"I can only state this as being 50% certain."*

11. On 7 June 2014, two witness statements were provided by NT. In the first statement, she discussed a man by the name of Alket, and she also said that she knew the Appellant, and she exhibited a photograph of Alket and the Appellant. In the second statement, she referred to CCTV around the time of the rape and said that *"the male on the left of the picture is ALEX. I have seen him wearing the red hoody in other photographs before and red is a colour he wears a lot. I can also tell it's Alex due to the way he is standing and his hair style…The second male in the photo is ALKET…"*

12. On 7 June 2014, DS Judge, the Senior Investigating Officer ("SIO") completed a Police National Computer ("PNC") Circulation Document, identifying the Appellant in his previous name, being wanted for the offence of rape. The document stated:

> *"Forensic Evidence (Not to be disclosed)*
>
> *BMW 323 T391 CNV used during the commission of the offence.*
>
> *Fingerprint identification – Exhibit SAM/32 recovered from the ridge detail trim on interior of rear nearside near to handle inside BMW 323 T391 CNV. Positively identified to a set of fingerprints held on the National Fingerprint Database in the name of Alexandhros West-Andrigianakis reference 126937/05G"*

13. The corresponding entry on the Occurrence Enquiry Report, completed by DS Judge, stated:

> *"…Circulate Alexandhros WEST-ANDRIGIANAKIS as wanted as a result fingerprint ID inside BMW motor vehicle At 11:55 I made this decision based on the information currently available. Intelligence obtained from Staffordshire Police detailing his involvement in a [matter] on the 27/04/2013. Rationale Custody image obtained strong resemblance to male featured on cctv wearing red top. Statement from [DCP] who believes image 50% resemblance to Male 2 mentioned in statement. Fingerprint evidence inside vehicle used during the commission of the offence. Stranger Rape male suspects present significant risk to general public. Potential to recover clothing, mobile phone and other evidence connected to the offence. Historically identification procedures (VIPER) more successful when completed nearer the offence date Negative Presence in vehicle does not directly link to rape offence May have explanation for presence of fingerprint, received lift in vehicle or other explanation"*

14. DS Judge also completed a High Priority Arrest Request document ("the HPAR"). It referred to the rape and how the enquiries had identified Alexandhros West-Andrigianakis as a suspect. It identified the Appellant's date of birth and last known address and stated that the Appellant had been circulated as wanted on the PNC. It referred to the fact that the Complainant had identified the male who raped her as "*as white pale complexion, foreign, early 20's and 5'3" 5'4" in height. He was skinny build and had short blond hair. He had gaps or dark patches in between his teeth. He was wearing a red round necked T-shirt and light coloured jeans. The driver of the vehicle was white but tanned, late 20's early 30's and around 14/15 stone. He had dark facial hair and was wearing a blue top and dark jeans.*"

15. The HPAR included images which the text explained also were taken directly from CCTV footage immediately prior to the offence; the red top male was identified as Alexandhros West-Andrigianakis. The dark top male (with various names including Alket was yet to be identified but would also still need arresting). DS Judge also included a photograph of the two males together on a different occasion as exhibited by NT in her witness statement.

16. On 9 June 2014, NT was shown the complete CCTV footage, and she identified the person in the red top as "Bernard" and the person wearing the black top as "Alket" and said that she did not doubt the recognition. DC Parkins was present, and DC Anne Teresa Davies was the officer who completed the procedure.

III The arrest

17. Without knowing about this, on 10 June 2014, PC Sanders received the HPAR and was asked to arrest the Appellant by her sergeant. Together with PC Hobday, PC Sanders attended the Appellant's address on that day and arrested the Appellant for the offence of rape at about 17:29, saying it was for an offence of rape but without providing any further details about the offence.

18. The Appellant arrived at the police station at or around 18:10. At or around 18:25, the Appellant's detention was authorised by PS Makin. Between 21:25 and 22:16, DC Parkins and DC Sallis interviewed the Appellant. The interview primarily consisted of the Appellant providing information on various people he knew including 'Bernard' and 'Alket'. The Appellant denied all involvement in the offence. At 22:29, the Appellant was granted bail and he was thereafter released from custody. On 4 July 2014, the Appellant's bail was cancelled, and he was told that no action would be taken against him.

19. The Appellant was born on 6 October 1987. At the time of the Appellant's arrest on 10 June 2014, he was 26 years old. He was between 5'9" and 5'10" tall and of medium build. The Appellant's hair was brown and his skin olive in complexion. He had a prominent tattoo on his neck (which has increased in size since then) and a healthy set of teeth. The Appellant speaks with a Derbyshire/Staffordshire accent.

20. In the course of evidence given by DS Judge, he referred to building blocks which led to the decision that there was material on which to arrest the Appellant. The matters to which he referred included the following:

    (i) After the incident, a witness provided the name of the Appellant;
    (ii) Another witness thought that there was a 50% chance that one of the persons who purchased the BMW vehicle corresponded with the image of the person in the CCTV;
    (iii) Fingerprints of the Appellant were found in BMW vehicle.

21. In the estimation of the Derbyshire police, there was sufficient information to put on the PNC with a view to arresting the Appellant as a suspect. A matter which they would consider was the risk of the person absconding and in particular going abroad.

22. As regards the information to the effect that the identification had been of a much smaller person, DS Judge said that the identification details may not be correct sometimes due to trauma and sometimes due to the effect of alcohol or other substances.

23. There was a question as to the point at which DS Judge knew about the identification of Bernard. The viewing of the CCTV leading to the identification of Bernard was put into a booklet shortly before 8pm on 9 June 2014. DC Rye told the jury that that booklet would have been placed in someone's in-tray, probably DS Judge's in-tray. There is no evidence as to when DS Judge became aware of the identification of Bernard. There is a document dated 16 June 2014 stating, *'Create PNC wanted reports on limited details known for suspects and including photographs to be held by Derbyshire warrant'* and then there are some names that have been redacted. There is a log dated 17 June 2014 prepared by DS Judge in which he named Bernard and Alket as suspects.

24. In re-examination, DS Judge could not recall when between 9 June 2014 and the subsequent logs he became aware of when he actually viewed the material naming Bernard. He said the following:

> *"…what I don't recall is whether or not I was on duty on the 9th or the 10th , however, what I will say that even with that and the information that we have, notably the fingerprint in the vehicle used during the commission of the offence and the sale of the vehicle, then we still would have proceeded and continued with the arrest. And to support that, the decision to circulate on PNC as wanted was authorised by Inspector Cannon and as I said earlier, he based that on the information I provided which related to the BMW and the fingerprint evidence.*
>
> *…*
>
> *on that information he would have still been shown on the PNC as wanted because it didn't fundamentally change other aspects of the evidence and as the investigation progressed and there would have been interviews and searches to recover other evidence, the potential further identification procedures later down the line, involving the victim, there was still reasonable and viable options available to us once the person was arrested. So in answer, by the fact that she had changed what she said in her statement would not have changed the outcome in the claimant being arrested.*
>
> *Q. The only witness who identified Mr Karalis on the CCTV changes that identification and you're saying he still would have been arrested?*
>
> *A. Yes, because of the reasons I've explained, which is the fingerprint inside the vehicle used during the commission of the offence and the other, the group of people being together beforehand, from the person selling the car and it's what [NT] said in her statement that she identifies Alex being with one of the other people that was featured in the investigation."*

25. The next section of cross-examination in which it was put to DS Judge that he caused the Appellant to be arrested on 10 June 2014 by completing the HPAR. The answer was not simply *"yes"*. The answer was *"Yes, I collated the information and reviewed the information and evidence and arranged for him to be arrested, yes."* DS Judge was asked whether he accepted responsibility for the arrest to which the answer was not simply *"yes"*. It was *"Yes, I reviewed the evidence and collected it together and asked for him to be arrested."* These questions were building up to the question *"Let me put this to you then, you didn't honestly suspect, at any time, that Mr Karalis had committed a rape, did you?"*

26. The final part of cross-examination following this question needs to be set out in full:

Q. "Let me put this to you then, you didn't honestly suspect, at any time, that Mr Karalis had committed a rape, did you?

A. That's incorrect, I did suspect that he was involved in the commission of the rape offence.

Q. Well you may have thought he'd be able to assist with your enquiries, but you didn't actually suspect him of the offence.

A. I suspected him of being involved in the commission of the offence, whether that be in the vehicle part of the people carrying him to the location or the actual act itself.

Q. He never matched the description of the man that the complainant said had raped her did he?

A. I've explained on a number of occasions, in victims of serious sexual offences or trauma descriptions are not a single piece of evidence that we rely upon, we look for other evidence and in this particular occasion, it was the vehicle and the fingerprints as well as all the other information.

Q. Even if there was reasonable suspicion prior to [NT] completing the identity procedure, do you accept that it would have fallen away when she identifies the man in the red top as somebody completely different?

A. What do you mean by falling away?

Q. The identity, she had identified Mr Karalis from the still image and that fell away when she watched the full CCTV, didn't it, and identified somebody else?

A. But we wouldn't have relied upon [NT's] identification in concluding the offence, what we would have done, we'd have conducted interviews with the claimant and if necessary, we would have gone down identity procedures or forensic examinations, the clothing or otherwise later on down the line of the investigation. So NT initially gave us the information leading towards the identity of the male, but that was then further supported by the fingerprint in the vehicle.

Q. In terms of the necessity to arrest Mr Karalis, you didn't pay any thought to it did you really?

> *A. I absolutely did, the biggest overriding factor was in the necessity test, it focusses on the person disappearing and therefore hindering the investigation.*
>
> *Q. What you were interested in was trying to get things done as quickly as possible to identify the true suspect, but you leaned on Mr Karalis to get that.*
>
> *A. No, not at all, no. The necessity was there to arrest the claimant, we were looking to recover mobile phones, clothing or any other information or evidence that would help either show that he was the person responsible or equally rule him out of the investigation. The evidence was there to arrest, and it was reasonable and necessary to do so."*

27. The evidence of PC Sanders has not been transcribed. However, it is apparent from the papers how her evidence was summarised to the jury since the summing up of the Judge has been transcribed as have submissions of Counsel as regards the evidence of PC Sanders. The position of PC Sanders was that she was not involved in the investigation. PC Sanders was not a detective: she was a uniformed response officer.

28. In the summing up of the Judge to the jury, she said the following, summarising parts of the evidence of PC Sanders:

> *"She confirmed that she would have to satisfy herself that she had reasonable grounds for someone's arrest, and her grounds were based on the information provided by the team. She said "I felt I had enough. You have to have sufficient information…"*
>
> *"As far as the arrest request was concerned, she said it is a request, and she does not have to arrest somebody, she has a discretion. She confirmed that she did not know what inquiries had been made, but she also said that being circulated as wanted on the police national computer again does not amount to an instruction. Although it does tell her that an inspector has authorised it, "But it doesn't remove the need for me to form my own reasonable grounds". She said, "My understanding is and was, it was the claimant who was the rapist"…"* (Transcript page 18 of 28 January 2022)

29. There were matters which were not revealed to her in the HPAR e.g. she knew nothing about the fingerprint evidence of the Appellant on the BMW vehicle or about the his identification (50% sure) of the Appellant in the purchase of vehicle, both

pieces of evidence linking the Appellant with the BMW vehicle identified in connection with the rape.

30. The reasons for the suspicion of PC Sanders included the following:

(i) the information provided to PC Sanders by other officers and especially in the HPAR as set out in detail above;

(ii) it was apparent that the source of the information on the HPAR came from Operation Diamond, that is to say the Criminal Investigations Department with responsibility for investigating serious sexual offences;

(iii) PC Sanders knew that this suspect had been circulated as 'wanted' which told her that an Inspector would have authorised his circulation for arrest;

(iv) PC Sanders had a CCTV still taken just before the offence had been committed in which the suspect was wearing a red top. She also had a second photograph of two men (not at the scene of the crime), one of whom was, according to the HPAR, Alexandhros West-Andrigianakis. This provided a good view of the suspect's face;

(v) at the address to which PC Sanders had been directed, she saw a male who matched the second photograph and he confirmed to her that his name was Alexandhros West-Andrigianakis.

31. PC Sanders was asked about the discrepancies between the description that was given by the victim and the appearance of the man in the photograph. She explained this did not make her doubt that the person in front of her was that of the person suspected of the offence. She gave two reasons for this. First, descriptions can be subjective. Second, in her experience, victims of crime can be mistaken about descriptions, for example, due to the effect of trauma or drink or drugs. It was normal to have recollections that were not completely accurate.

32. On the basis of the information in the HPAR including the above, PC Sanders gave evidence to the jury that she honestly suspected that the Appellant had committed the offence and she believed that she had reasonable grounds for such suspicion.

IV The decision subject to the appeal

33. On 28 January 2022, the Judge left two questions to the jury based on whether PC Sanders, the arresting officer, honestly suspected that the Appellant was guilty of the offence of the Complainant and whether she honestly believed that his arrest was necessary (Page 8 of transcript for that day).

34. The Appellant submitted that questions should have been left to the jury on DS Judge being whether he honestly suspected that the Appellant was guilty of the offence of rape and whether he honestly believed that his arrest was necessary (pages 51-56 of the transcript for 28 January 2022). The Appellant believed that these questions were

necessary to the issue of liability. This was because of the submission that DS Judge had caused the arrest of the Appellant and was responsible for it, the only information available to PC Sanders being the HPAR created by DS Judge. The Appellant relied on *Copeland v Commissioner of Police of the Metropolis* [2014] EWCA Civ 1014 (pages 57-67 of the transcript for 28 January 2022)**.** The Respondent submitted that the relevant suspicion was that of the arresting officer and not the briefing officer. The Judge said that she would return to the question of DS Judge after the first stage of questions to be left to the jury on PC Sanders.

35. The jury returned their verdict in respect of the questions on PC Sanders' state of mind, finding that she both honestly suspected the Appellant was guilty of the offence and that she honestly believed it was necessary to arrest him (page 33 of the transcript of 28 January 2022).

36. Submissions were then made to the Judge that, notwithstanding the jury's verdict, it was not objectively reasonable to suspect that the Appellant was guilty of the offence of rape on the information that was available to PC Sanders. It was for the police to prove on the balance of probabilities that the grounds for PC Sanders' suspicion were objectively reasonable.

37. The Judge found two matters. First, she found that PC Sanders did have objectively reasonable grounds to suspect the Appellant was guilty of the offence (page 46-50 of the transcript of 28 January 2022). The Judge:

(i) reminded herself of the low threshold required for reasonable suspicion and referred to the case of *O'Hara v Chief Constable of RUC* [1997] AC 286 (and see also *Commissioner of Police of the Metropolis v Raissi* [2008] EWCA Civ 1247 at para. 20);

(ii) found that PC Sanders as arresting officer was entitled to act on information provided by another officer, in this case from DS Judge and through the HPAR. She found that it is commonplace for detectives to task uniformed officers with arresting suspects (page 49 of the transcript of 28 January 2022). This was not an instruction but that it was for her to form her own conclusion which she did having considered the HPAR (the HPAR provided the basis on which PC Sanders could form her conclusion that there were reasonable grounds to suspect that the Appellant was guilty of the offence);

(iii) accepted the evidence of PC Sanders that she had was aware that it was for her to form her own view, and that she did form her view, and that she considered the detail of the HPAR;

(iv) found that PC Sanders was aware that the information came from Operation Diamond and was considered something which required circulation on the PNC which had been approved by an Inspector;

(v) found that PC Sanders had sufficiently objective reasonable grounds for her suspicion comprising the HPAR which the Judge set out at length in her ruling on objectively reasonable grounds and necessity at pages 46 – 50 of the transcript for 28 January 2022 including the matters set out at paras. 14-15 and 30 above.

38. Second, the Judge found that PC Sanders did have grounds to believe that it was necessary to arrest the Appellant. In finding that, the Judge said that:

    (i) the belief of PC Sanders that it was necessary to arrest the Appellant for the prompt and effective investigation and the preservation of evidence was justified objectively;

    (ii) this was a high priority arrest request for stranger rape, the Appellant had been circulated as wanted, and a search was required to preserve evidence in the form of clothing and mobile phones;

    (iii) PC Sanders was not obliged to consider all alternatives: there were other ways to secure a search but they would take too long: the mere fact that the Appellant was cooperative and non-aggressive did not make an arrest for stranger rape unnecessary.

39. The Judge then heard submissions in relation to DS Judge (pages 51-56 of the transcript for 28 January 2022). On behalf of the Appellant, it was submitted that the Respondent had to prove not only that PC Sanders honestly suspected that the Appellant was guilty of the offence but that DS Judge did too, relying on *Copeland v Commissioner of Police of the Metropolis* [2014] EWCA Civ 1014 (pages 57-67 of the transcript for 28 January 2022)**.** In reliance on a Northern Ireland case called *Hanna v Chief Constable of RUC* [1986] NI 103, the Judge determined that the only relevant matter was what was in the mind of the arresting officer and therefore that the jury need not be asked whether DS Judge honestly suspected the Appellant of the arrest (pages 56 of the transcript for 28 January 2022)**.** In respect of *Copeland*, the Judge determined that it was distinguishable and the position was set out in *Hanna* (see pages 52 and 56).

40. In a very brief interaction, it was acknowledged on behalf of the Appellant that if the Judge thought that PC Sanders had sufficient information to form objectively reasonable grounds to suspect the Appellant that she would likely find that DS Judge, who had more information, also had objectively reasonable grounds for suspicion. The Judge confirmed that was her view (page 57 of the transcript for 28 January 2022).

41. The jury was discharged, by consent. On 31 January 2022, following a written submission on behalf of the Appellant over the weekend, oral submissions were made as to whether, in the light of the position in respect of NT's identification of the male in the red top changing between 7 June 2014 and 9 June 2014, which was within the knowledge of the police, the Respondent could establish that there were objectively reasonable grounds for the arrest as at 10 June 2014, the date of the arrest.

42. The Appellant again relied on *Copeland*. The Judge determined that there were no "*free-floating*" objectively reasonable grounds and that what was relevant was what was in the mind of the arresting officer; the Respondent's burden had been discharged as a result of the application of section 24 of PACE 1984. In any event, the Judge

found that there were reasonable grounds to suspect the Appellant, even after NT had changed her identification having regard to the original identification of the Appellant and the fingerprint evidence.

43. The Judge found that it was not necessary for the Respondent to prove that DS Judge honestly suspected that the Appellant was guilty of the offence in order to discharge the burden in false imprisonment. It was only what was in the mind of the arresting officer that was relevant. Despite this, the Judge did consider that whether DS Judge had objectively reasonable grounds based on the information he had in his mind was relevant to that burden. However, in order to discharge the burden, it was not by reference to the information known to the Respondent's officers as a whole because what was relevant was the mind of the arresting officer.

44. The Judge found that the fact that there were two identifications did not end the reasonable suspicion that the Appellant committed the offence. This was in part the result of the building blocks which were not brought to an end because of the second identification of a man called Bernard. The Judge said that in the event that Bernard had been the Appellant, he might have sought to rely on the building blocks against the Appellant as being a reason why there was no reasonable suspicion of him. The reality was that in some cases, the identification of more than one person did not mean that there was no basis for reasonable suspicion against either of them. In the instant case, the Judge found that (a) the building blocks were sufficient to give rise to reasonable suspicion that the Appellant committed the offence, and (b) the subsequent identification of a man called Bernard did not end the reasonable suspicion of the Appellant: see para. 6 of the judgment of the Judge given on 31 January 2022.

45. This was evidence which was before the Court and from which the Judge was entitled to reach the conclusion which she did in para. 1 of her judgment of 31 January 2022 when she said:

> *"I am going to tell you briefly Ms Morris, I am against you on your arguments. Primarily it is because I do not consider the second identification by [NT] means that there were objectively no reasonable grounds. I consider that the fingerprint evidence, the evidence of the identification, the 50% resemblance by the person who sold the car on 20th May and the association in [NT's] mind even if she did not identify it together with the building blocks referred to by DS Judge in particular amounted to objectively reasonable grounds."*

46. The Judge came to the following conclusions in respect of DS Judge, namely that:

(i) the effect of the building blocks referred to above was that there were reasonable grounds for suspicion that the Appellant had committed the offence of rape. DS Judge had reasonable grounds for suspicion on 7 June 2014 including (a) the first identification of NT, (b) the fingerprints of the Appellant in the suspect vehicle, and (c) the evidence of the seller of the BMW (DCP) that he was 50% sure that one of the buyers corresponded with the image of the person in the CCTV;

(ii) he was entitled on that basis to process a request for the arrest of the suspect, namely the Appellant.

(iii) It was not apparent when between 9 June 2014 and 17 June 2014, DS Judge came to learn about the second identification of NT. That did not mean that objectively there were not reasonable grounds to believe that the Appellant had committed the offence in that the building blocks still remained at least at the time of the arrest on 10 June 2014.

(iv) If DS Judge had known about the second identification prior to the arrest, that would not in his mind have removed the reasonable grounds for suspicion: there would then have been suspicion about more than one person, requiring further investigation against both of them. The Judge expressly accepted that evidence. It should be added that as submitted by the Respondent, there is a danger of hindsight: it did not follow from the fact that the Appellant was subsequently eliminated from enquiries that the second identification was reliable.

V The proper approach to appeals

47. The test of whether an appeal will be allowed is set out in CPR 52.21(3) in the following terms:

> *"(3) The appeal court will allow an appeal where the decision of the lower court was—*
>
> *(a) wrong; or*
>
> *(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."*

48. It is necessary to have in mind the oft cited case of *Fage (UK) v Charbani* [2014] EWCA Civ 4, at para. 114 where Lewison LJ stated:

> *"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: Biogen Inc v Medeva plc [1977] RPC1; Piglowska v Piglowski [1999] 1 WLR 1360; Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] UKHL 23 [2007] 1 WLR 1325; Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively McGraddie v McGraddie [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include*

> *i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.*
>
> *ii) The trial is not a dress rehearsal. It is the first and last night of the show.*
>
> *iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.*
>
> *iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*
>
> *v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).*
>
> *vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."*

VI The legal issues

(a) Introduction

49. A central issue in this case arises out of the refusal to the Judge to put to the jury the question as to whether DS Judge honestly suspected at the time of the arrest that the Appellant may have been guilty of the offence of rape of the Complainant. As noted above, the Judge did not put the question because of a finding that the relevant suspicion had to be that of the arresting officer and not that of the briefing officer or anyone else within the police. There has on the appeal been an analysis of a long line of cases in this regard, and it is necessary to analyse them for this purpose. Ultimately, every case depends on its own factual context. Although the case law will be examined, it will be necessary to apply the case law to the instant facts of the case either based on the findings of the Judge or giving particular weight to her findings bearing in mind that she saw the relevant witnesses. The Judge found that on the facts of the case the question for the jury to decide was whether the arresting officer (PC Sanders) had suspicion honestly held that the Appellant had committed the offence. There was no pleaded case and on the facts the question did not arise to the effect that someone other than the arresting officer had such honestly held suspicion. This did not apply to the briefing officer (DS Judge), nor was there scope for a free-floating inquiry among such police officers who might have been involved in the case.

(b) The general position

50. The parties both relied on *R v Deputy Governor of Parkhurst Prison, Ex p Hague* [1992] 1 AC 58 per Lord Bridge at 162D to the effect that false imprisonment comprises two elements: the fact of the imprisonment, and the absence of lawful authority to justify it. Section 24 of PACE 1984 provides the statutory framework within which an individual officer can lawfully carry out an arrest.

51. The following questions, derived from Stuart-Smith J in *Parker v Chief Constable of Essex Police* [2017] EWHC 2140 (QB) (adapted *Castorina* questions) and cited at [59] in the judgment of Sir Brian Leveson in the Court of Appeal in *Parker v Chief Constable of Essex Police* [2018] EWCA Civ 2788; [2019] 1 WLR 2238, will in some cases be sufficient to dispose of a claim in false imprisonment arising out of arrest and detention by the police:

> *"(A1) Did the arresting officer suspect that an offence had been committed? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.*
>
> *"(A2) Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely objective requirement to be determined by the court.*
>
> *"(1) Did the arresting officer suspect that the person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.*
>
> *"(2) Assuming the officer had the necessary suspicion, did the arresting officer have reasonable grounds for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.*
>
> *"(2A) Did the arresting officer believe that for any of the reasons mentioned in section 24(5) of the 1984 Act it was necessary to arrest the person in question? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.*
>
> *"(2B) Assuming the officer had the necessary belief, were there reasonable grounds for that belief? This is a purely objective requirement to be determined by the judge, if necessary on facts found by a jury.*
>
> *"(3) If the answer to the previous questions is in the affirmative, then the officer has a discretion which entitles him to make an arrest and in relation to that discretion the question arises as to whether the discretion has been exercised in accordance with the principles laid down by Lord Greene MR in Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223."*

(c) The case of *Davidson*

52. The Appellant submitted that his was a case where the arrest had been procured, directed or instructed by the briefing officer. The submission was that the case of *Davidson v Chief Constable of North Wales* [1994] 2 All ER 597 should have been applied by the Judge. In *Davidson*, the Court of Appeal confirmed that where an individual directs, procures, requests or encourages another to arrest a person, the first individual can be liable in false imprisonment for the arrest even where they have made a simple mistake rather than acted in bad faith. That was a case where the person alleged to have directed the police officer arresting party was a store detective. It was found that there had not been a direction, procurement or direct request or encouragement.

53. Sir Thomas Bingham MR observed at 600H-601C:

> *"It is plain on the facts that Mrs Yates herself did not arrest, imprison, detain or restrain the plaintiff's liberty directly in any way herself. She gave information to the police and according to their evidence they acted on it. If she is liable, therefore, it can only be through the police constables either as her agents or, as Mr Clover who appears for the appellants would prefer to put it, as persons whom she procured to act as they did. It is however plain, as I have indicated that the police constables acted under s.24(6) of the Police and Criminal Evidence Act 1984. It was accepted that they had reasonable suspicion and acted in pursuance of that section and it is accepted that their action was proper. It, therefore, is correct, as the learned judge observed, that a somewhat anomalous situation arises if the appellant's case is correct, since the defendant would be liable for an act of persons who were not themselves liable in respect of what they had done.*
>
> *[...]*
>
> *We, nonetheless, as I repeat again, have a case in which the constables, according to them, exercised their own judgments and effected the arrest pursuant to s.24(6) of the 1984 Act."*

54. Having analysed authorities, Sir Thomas Bingham MR identified the key question at 604H as:

> *"Accordingly, as it would seem to me, the question which arose for the decision of the learned judge in this case was whether there was information properly to be considered by the jury*

> *as to whether what Mrs Yates did went beyond laying information before police officers for them to take such action as they thought fit and amounted to some direction, or procuring, or direct request, or direct encouragement that they should act by way of arresting these defendants."*

55. At p.605A, he said:

> *"[…] The fact remains that the learned judge to my mind quite correctly held that what Mrs Yates did and said in no way went beyond the mere giving of information, leaving it to the officers to exercise a discretion which on their unchallenged evidence they did as to whether they should take any action or not."*

56. Staughton LJ said at 605F-J:

> *"Was there any evidence to go to the jury that she [Mrs Yates] did arrest Miss Davidson and Mr Halford? It was not she who physically detained them. That was PC Walker. She was not even there; but she had given information to the police officers and had pointed out Miss Davidson and Mr Halford to them.*
>
> *In those circumstances, like Sir Thomas Bingham MR, I would refer to the passage in the judgment of Barry J in Pike and Waldrum & Peninsular & Oriental Steam Navigation Company* [1952] 1 Lloyd's Rep 431 at 454:
>
> > *'The authorities cited to me, to which I need not refer in detail, establish quite clearly to my mind that the person who requests a police officer to take some other person into custody may be liable to an action for false imprisonment; not so if he merely gives information upon which the constable decides to make an arrest.'*
> >
> > *Whether a request by itself is sufficient to make a person liable does not arise in this case. What is clear in the passage I have read is that merely giving information is not enough. That does not give rise to false imprisonment. Mrs Yates did no more than that. However much one may look at evidence and analyse what possible consequences might or would arise from the information which she gave the fact is that all she did was give the information."* (Emphasis added)

57. Thus, the Court of Appeal in *Davidson* determined there was no evidence to suggest that Mrs Yates went beyond providing information to the police. In another case, a person who expressly requests, directs, or procures a police officer *may* be liable to an action in false imprisonment.

58. In *Ahmed v Shafique* [2009] EWHC 618 (QB**)** at [86], Sharp J noted that there is no requirement of malice or bad faith under the tort of false imprisonment, but instead it is a relevant factor when considering whether one individual has procured the arrest of another.

59. The decision in *Davidson* was considered by the Court of Appeal in *TTM v London Borough of Hackney* [2011] 1 WLR 2873; [2011] EWCA Civ 4 at [36]:

> *"36. In the Davidson case it was held on the facts that there was no liability on the part of the store detective, but suppose for the sake of argument that the facts had led to a decision on the other side of the line. There would have been no illogicality in holding that the claimants had suffered wrongful deprivation of liberty by reason of the store detective's conduct, albeit that the police had acted lawfully in arresting them. The explanation is straightforward. Lawfulness or unlawfulness is an attribute of the conduct of the defendant which caused the claimant's loss of liberty. In the hypothetical example, the fact that the police acted under a lawful power of arrest would not have cured the wrongful character of the store detective's conduct, nor would it have been an independent act breaking the chain of causation between the store detective's wrongful conduct and the claimant's loss of liberty."*

(d) The case of *O'Hara*

60. It is now necessary to consider the House of Lords case of *O'Hara v Chief Constable of the RUC* [1997] AC 286 (*"O'Hara"*), that is a case in time after *Davidson*. There, the question was *"whose mind must reasonably have the requisite suspicion?". O'Hara* was directly concerned with s.12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984 which was in materially the same terms as s. 24(2) of PACE. It established that the Court examining the question of reasonable belief should focus on the mind of the arresting officer at the time of the arrest. At 298A, Lord Hope said:

> *"My Lords, the test which section 12(1) of the Act ... has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All*

> *that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised."*

At 302G, Lord Hope said:

> *"... the reasonable suspicion has to be in the mind of the arresting officer. So it is the facts known by or the information given to the officer who effects the arrest or detention to which the mind of the independent observer must be applied. It is this objective test, applying the criterion of what may be regarded as reasonable, which provides the safeguard against arbitrary arrest and detention. The arrest and detention will be unlawful unless this criterion is satisfied."*

61. Lord Steyn said at 293A-B:

> *"Section 12(1) is undeniably a statutory provision in the first category. The rationale for the principle in such cases is that in framing such statutory provisions Parliament has proceeded on the longstanding constitutional theory of the independence and accountability of the individual constable: Marshall and Loveday, The Police Independence and Accountability in The Changing Constitution, 3rd ed., ed. by Jowell and Oliver, 295 et seq; Christopher L. Ryan and Katherine S. Williams, Police Discretion, 1986 Public Law 285, at 305. This case must therefore be approached on the basis that under section 12(1) the only relevant matters are those present in the mind of the arresting officer."* (emphasis added).

62. As noted above, the Judge in the instant case referred to and relied on the case of *Hanna.* It is from Northern Ireland: the judge was Carswell J (later Lord Carswell). In that case, the Court found that where the context of an arrest is that there has been an investigating officer or team of investigating officers who briefed an arresting officer, then it is what is in the mind of the arresting officer only which is relevant to the question of false imprisonment.

63. The Appellant submitted that this was wrong because it was to conflate the requirement about the arrest and the tort of false imprisonment which required consideration not only of the arrest but the subsequent detention. I am not satisfied about this criticism in that the case of *O'Hara* considered and applied the case of *Hanna*.

(e) The case of *Alford*

64. The Respondent relies extensively on the case of *Alford v Chief Constable of Cambridgeshire Police* [2009] EWHC Civ 100 in which the claimant was arrested on suspicion of having caused death by dangerous driving. Two reports were prepared by expert witnesses addressing the question of whether the claimant's driving met the appropriate standard. One was critical of his driving, one was not. The report that was not critical was never provided by the briefing officer to the arresting officer, albeit the judge was satisfied that it had not been deliberately withheld from the arresting officer. Therefore, that favourable report was not taken into account in the subsequent decisions to arrest and prosecute the claimant.

65. The claimant was in due course charged, but the prosecution was subsequently discontinued. He brought a claim against the Chief Constable for false imprisonment and malicious prosecution, which was dismissed. Evidence was heard from (amongst others) the briefing officer and the arresting officer.

66. The first instance judge found that the arresting officer had the requisite suspicion, that he had reasonable grounds for his suspicion and that he did not exercise his discretion unreasonably.

67. The relevant ground of appeal for present purposes was the claimant's challenge to the finding of reasonable grounds for suspicion. Richards LJ observed (at para. 30) that the fact that the additional report had not been passed on to the arresting officer was not relevant to the lawfulness of the arrest. The Judge accepted that the briefing officer's reading of it did not alter his suspicion, and there was no evidence that he had deliberately withheld the report. Richards LJ found (at para. 34) that the power of arrest is vested in the individual police constable (s.24 of PACE 1984) and that whether he had reasonable grounds for suspicion "*must be determined as an objective question on the basis of the matters known to him at the time*". Richards LJ found (at para. 37) that the arresting officer is "*entitled to make an arrest based on a briefing from other officers, without knowing anything about the offence beyond what he learned from the briefing*."

68. Richards LJ referred to the reasoning of Sedley LJ in *Clarke v Chief Constable of North Wales Police* (5 April 2000, unreported) who had said that there is no requirement for the arresting officer to have first-hand knowledge, so long as it comes from a source which is reasonable for her to rely upon. In the words of Sedley LJ, *"Policing would otherwise be a practical impossibility."* It would be different if the briefing made it apparent that the sources were unreliable or non-existent. In the event that the briefing officer was committing an independent tort (e.g misfeasance in public office by the deliberate withholding of material from the arresting officer), then there might be vicarious liability of the Chief Constable for a wrongful arrest: see the judgment of Richards LJ in Alford at para. 38. The other members of the Court of Appeal, namely May LJ, the President, and Rimer LJ concurred with Richards LJ.

69. The decision in *Alford* was entirely consistent with the decision in *O'Hara*. There are observations of Stuart-Smith J in *Parker v Chief Constable of Essex Police* [2017] EWHC 2140 (QB) which are derived from and quote further from *O'Hara*. Although the Court of Appeal overturned the decision at first instance in *Parker,* it did not interfere with this part of the judgment. Stuart-Smith J said the following:

"20. Despite the apparent clarity of these statements of high principle, an enquiry into the reasonableness of the arresting officer's suspicion often concentrates on the information that was available to the police more generally as well as scrutinising what was in the mind of the arresting officer. Such evidence is necessary in many such cases to enable the Court to answer the questions (a) whether the suspicion held by the officer who arrested the Claimant was reasonably grounded and (b) whether another officer could and would have arrested the Claimant lawfully….

21. The answer to the question "what material can and cannot be taken into account in forming the requisite intention?" is not as simple as might at first appear. The reasonable grounds for a suspicion do not have to be based on the officer's own observations or on material that is in a form that would be admissible evidence at a trial: see O'Hara at 293C per Lord Steyn. Thus the arresting officer may in appropriate cases rely on what he has been told by other officers (typically, though not necessarily, in a briefing), hearsay evidence, intelligence that would not be admissible in evidence, or a mixture of any and all of these. But, as Lord Hope made clear in O'Hara at 301H:

> *"For obvious practical reasons police officers must be able to rely upon each other in taking decisions as to whom to arrest or where to search and in what circumstances. The statutory power does not require that the constable who exercises the power must be in possession of all the information which has led to a decision, perhaps taken by others, that the time has come for it to be exercised. What it does require is that the constable who exercises the power must first have equipped himself with sufficient information so that he has reasonable cause to suspect before the power is exercised."*
>
> *In summary, the arresting officer may rely on information received from others; but he may not simply obey orders."*

22. A principle which necessarily allows the arresting officer to rely upon what he is told by others carries obvious risks. The first is that the information provided to the arresting officer may prove to be false. Lord Hope dealt with this risk in the next passage of his speech, at 298C-E:

> *"This means that the point does not depend on whether the arresting officer himself thought at that time that [the grounds in his mind] were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of*

> *the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."*
> [Emphasis added]

The last sentence above, fastening on the source of the information of the arresting officer and its context, seen in the light of all the surrounding circumstances is important in determining whether there are reasonable grounds for the suspicion.

(f) The case of *Copeland*

70. Having referred in some detail to the approach of Stuart-Smith J in *Parker*, the Appellant relies on case law which is said to be in contradiction of the above. The Appellant's submission is that there is another Court of Appeal case, namely *Copeland v Commissioner of the Police of the Metropolis* [2015] 3 All ER 391; [2014] EWCA Civ 1014 (*"Copeland"*), binding on this court which followed and applied *Davidson.* Subsequently, unlike in the case of *Parker*, *Copeland* was followed at first instance by Wyn Williams J in *Mouncher v Chief Constable of South Wales Police* [2016] EWHC 1367 (QB) at [429-434], doubting *Alford* insofar as it contradicted *Copeland*.

71. In *Copeland,* the 'briefing' party was PC Bains, a police officer, who was also the victim of the alleged assault; the arresting officer was his colleague PC Derbyshire, who had not been present at the time of the alleged assault. It was asserted by Ms Copeland that PC Bains had lied when he told PC Derbyshire that Ms Copeland had just punched him.

72. Moses LJ said at [18]-[22]:

> *"18. This case is not, however, concerned with PC Derbyshire's state of mind at all. That state of mind was entirely influenced by and dependent upon what she was told by PC Bains. If PC Bains deliberately lied, as alleged, then Ms Copeland's arrest, which was attributable to PC Bains' allegation and nothing else, was unlawful, and, there being no*

issue as to causation, resulted in an imprisonment which was false.

19. It is for the police to establish the lawfulness of the arrest (see Auld LJ (cited above) and in Al-Fayed *(at paragraph 83). Where that arrest was procured by someone who has deliberately lied and procured or directly encouraged an arrest, then the arrest is unlawful. In Davidson v Chief Constable of North Wales [1984] 2 All ER 597, the question was whether a defendant to a claim for false imprisonment had "himself been the instigator, promoter and active inciter of the action (namely, the arrest that followed)" (602d).*

[The key question of Sir Thomas Bingham MR cited above was quoted].

In short, the question was not whether the arresting officers had acted innocently but whether the arrest was unlawful by reason of the conduct of the informant in procuring or directly encouraging that arrest by false evidence.

20. It is not and was not disputed that the burden of proving the lawfulness of the arrest lay upon the Commissioner. The claim for false imprisonment was based on the absence of lawful authority for the underlying arrest. It was for the Commissioner to prove that the arrest was lawful and that, accordingly, there was lawful justification for the detention. The Commissioner could not do so unless he established that PC Bains was acting in good faith in requesting PC Derbyshire to arrest Ms Copeland. As Toulson LJ put it in *R (M) v Hackney LBC* [2011] *EWCA Civ 4 [2011] 1 WLR 2873 [36]:–*

"Lawfulness or unlawfulness is an attribute of the conduct of the defendant which caused the claimant's loss of liberty."

He recognised the principle at common law that:–

"There may be false imprisonment by A, although it was B who took the person into custody and B acted lawfully, provided that A directly caused B's act and that A's act was done without lawful justification."

21. The legality of the arrest and therefore of the detention turned on the legality of the actions of he who caused it, namely, PC Bains. Just as it was for the police to establish that the arresting officer, PC Derbyshire, suspected that Ms Copeland had committed an arrestable offence and that she had reasonable grounds for doing so, it was no less for the police to establish that that was not on the basis of false evidence deliberately intended to procure the arrest of Ms Copeland.

> *22. As the judge recognised, were it otherwise, the burden would shift according to whether PC Bains himself arrested Ms Copeland or whether he asked someone else to do so. There is no sense in such a shift. For those reasons, in my view, the judge correctly directed the jury as to the burden of proof in question 3."*

(g) Are the cases irreconcilable?

73. In *Mouncher*, Wyn Williams J said that in *Alford*, no argument had been presented based upon *Davidson*, whereas in *Copeland* the argument was based on *Davidson*. He did note that Moses LJ in *Copeland* did not refer to *Alford*. At para. 433, Wyn Williams J said the following:

> *"A similar approach to that taken in Davidson and Copeland was adopted in the Divisional Court in R(Rawlinson and Hunter) and others v Central Criminal Court [2013] 1 WLR 1634 – see, in particular, paragraphs 209 to 234. No doubt, at some point in the future, the Court of Appeal or Supreme Court may be called upon to determine whether there is any irreconcilable tension between the decision in Alford and decisions such as Davidson, Hunter and Copeland. For my part, I am satisfied that I should follow the reasoning of the decisions in Davidson, Hunter and Copeland. If, in due course, they can be reconciled with Alford so much the better; if they cannot, I believe the law of precedent requires me to follow the line of authority which is the later in time. (emphasis added)"*

74. The possible "irreconcilable tension", referred to by Wyn Williams J, between the cases of *Alford* and *Copeland* requires consideration. Although there is an odd lack of citation in the cases (*Alford* of *Davidson*, and *Copeland* of *Alford*), I do not regard the cases as fundamentally at odds. As regards *Copeland*, the essence of the case was that the briefing officer, PC Bains, had deliberately lied. The effect of the lie was that the subsequent arrest was due to the lie of PC Bains. Another way of expressing the same thing was that it was based on false evidence deliberately intended to procure the arrest of Ms Copeland, and having that effect. If there is a case where the briefing officer simply gives an instruction to an arresting officer to arrest a suspect, where the latter without more acts on that instruction, then the arresting officer will be acting wrongly: see the extract from *O'Hara* at 301H (quoted above in the extract from *Parker*).

75. This does not detract from the principle that in most cases, the arresting officer will be the sole person whose suspicion is to be considered. As noted by Stuart-Smith J in *Parker*, and from his citation of *O'Hara*, the arresting officers are entitled to rely upon information provided to them by investigating or briefing officers, but they may not simply obey orders. They must then decide whether to exercise their discretion to

effect the arrest. It will be up to the arresting officers to assess the information bearing in mind its *"source"* and *"its context, seen in the light of the whole surrounding circumstances",* referring back again to the words of Lord Hope in *O'Hara* at p.298E.

76. That is why it is out of the norm for the briefing officer to be liable by themselves or jointly with the arresting officer for a wrongful arrest. There are exceptions including the case of the lying briefing officer. In such cases, it is as if the briefing officer is making the arrest, such that the Court may need to consider the honesty and the reasonableness of the suspicion of the briefing officer in addition to that of the arresting officer, alternatively whether the briefing officer is guilty of misfeasance giving rise potentially to vicarious liability of the chief constable. There may be another exceptional case where an instruction is given on the part of the briefing officer to the arresting officer who then acts on that instruction without more. In such a case, there might be a failure on the part of the arresting officer to exercise any discretion at the point of arrest. In those circumstances, questions will arise as to whether the briefing officer is liable in addition to the arresting officer.

77. I respectfully do not detect a tension between these Court of Appeal cases such that I do not have to decide which is binding on me. I am able to follow both of them. Like Stuart-Smith J, I find that I am not constrained to follow *Alford*: on the contrary, I follow both *Alford* and *Copeland.*

(h) The burden of proof

78. A question also arises as to how this relates to the burden of proof being on the Chief Constable to prove the honesty of the relevant officer. There is no principle in the authorities which states that in a case such as the present one a Chief Constable is required to prove that both the briefing officer and the arresting officer each honestly suspect the Appellant of an offence and, that in respect of each officer, their suspicions are objectively reasonable. It is not the case that a roving search of each person within the police force involved in every arrest and detention and an assessment of whether they honestly held a suspicion and whether there were reasonable grounds for the same. The matter is well put at para. 35 of the skeleton argument of the Respondent which reads as follows:

> *"The Particulars of Claim set out particulars of false imprisonment which focus entirely on the Appellant's arrest and at no stage impugn or challenge the conduct of DS Judge. It is no answer to this for the Appellant to state that the Respondent bears the burden of proof. This is to confuse the identification of issues (the responsibility of both parties) with the burden of proof (which lies with one party). The Appellant has repeatedly suggested that he is not obliged to articulate why it is that he says that his arrest was unlawful because it is the Respondent who bears the burden of proof; this is misconceived and, as identified by [the Judge] results in a trial that is a "moving feast".*

VII Applying the legal analysis to the instant case

79. In the instant case, the Particulars of Claim concentrated on the conduct of the arresting officers and that which happened next. There was not an express plea impugning and challenging the conduct of DS Judge or a contention that DS Judge was the person who was in effect arresting the Appellant. There was not a pleaded case to the effect that DS Judge directly caused PC Sanders to arrest the Appellant or that DS Judge acted without lawful justification. In the course of the trial, the Appellant sought to contend among other things more than that PC Sanders did not honestly suspect the Appellant of the offence and did not have reasonable grounds belief for the suspicion. The Appellant submitted that:

(i) DS Judge did not honestly suspect the Appellant of the offence of rape of the Complainant;

(ii) DS Judge did not have reasonable grounds to suspect that the Appellant was guilty of rape of the Complainant (a) at the time when he filled out the HPAR on 7 June 2014, or (b) at the time of the arrest on 10 June 2014 (bearing in mind the second identification of NT);

(iii) Even if DS Judge did not have knowledge of the second identification as at 10 June 2014, somebody within the police knew that there were not reasonable grounds for the suspicion by reason of the second identification;

(iv) It was up to the Respondent to prove an honest suspicion and reasonable grounds for the suspicion not only on the part of the arresting officer, but of all its officers involved in the matter at least up to the point of arrest.

80. The Judge found on the evidence as a whole, that PC Sanders as arresting officer was entitled to act on information provided by another officer, in this case from DS Judge and through the HPAR. This was not an instruction but that it was for her to form her own conclusion which she did on the basis of the information which she had and considered at the time of the arrest. She exercised her discretion in effecting the arrest.

81. There was no reason in this case to depart from the general starting point that the focus should be on the state of mind of the arresting officer and not the briefing or any other officer not involved in the arrest. This was not a case where the briefing officer had lied as in *Copeland* such that he was to be treated as having instructed the arresting officer. Nor was it a case where any other exception had been invoked such as the arresting officer failing to exercising any discretion or exercising a discretion in a *Wednesbury* unreasonable manner. It was not a case where the police was required to prove the honesty of anyone other than the arresting officer. It followed that the Judge was not at fault for not inviting a verdict from the jury about the honesty of the suspicion of DS Judge or any officer other than PC Sanders.

82. A submission was made on behalf of the Appellant that *Copeland* was not limited to a case where there had been bad faith by the briefing officer. It might apply also to a case where, as in *Copeland*, the briefing officer was a witness or the alleged victim. It was submitted that it would also apply to a case where the briefing officer was found to have done more than place information before the arresting officer, but had (even without bad faith or being a witness or the alleged victim) directed, instructed or procured the arresting officer to effect the arrest. It was submitted that in the instant case (a) there was a direct request to make an arrest by a more senior officer to a more junior officer, namely through the HPAR, and (b) that was sufficient for the Court to treat the briefing officer as potentially liable for the arrest in addition to the arresting officer. This was said to be an application of the law in the case of *Davidson*, and that it was not confined to the facts of *Copeland* or to cases of lay informants making a request to the police.

83. Ms Collier on behalf of the Respondent sought to meet this by saying that there was a distinction between cases of information being laid by a lay person to the police as in *Davidson*, and cases of information being shared within the police to an arresting officer. In the former case, it was necessary to consider whether it was the laying of information or the giving of an instruction. In the latter case, it was submitted that it was bound to be the equivalent of the laying of information because the police acted in a collaborative or team manner by sharing information leading to it being passed on to an arresting officer.

84. In my judgment, this is not a distinction in principle, but it provides a context. The distinction is made in *Davidson* between laying information and directing the arrest, and it is easy to see how the line is kept in such a way that the Court will not lightly infer that it was a direction or instruction. Even if the police had acted hitherto invariably on the information of a particular store detective by effecting an arrest, that would not necessarily be enough to lead to an inference of an instruction or direction. The consistency of that previous conduct did not lead in *Davidson* to an inference that there was an instruction or direction or procurement by the store to the police to effect an arrest.

85. What of the context of information passed on within the police? This was referred to in *O'Hara*, namely of investigating officers passing the matter on for an arrest by an arresting officer. That is how policing often works in a collaborative manner. In the words of Sedley LJ in *Clarke* quoted above: "*Policing would otherwise be a practical impossibility."* There may be an investigating team within which a briefing officer may make a request for an arrest, perhaps to a number of persons in a variety of locations. The latter would then consider the request and, if appropriate, seek out the suspect and then, if appropriate, effect the arrest.

86. The arrest generally is that of the arresting officer and not of a briefing or investigating officer. There has been in this case a use of language which does not give rise to the arresting officer acting on the instructions of the investigating officer. The fact that the HPAR is a request for the arrest of a suspect does not give rise to a departure from the norm. Without more, it is still the usual case of the arresting officer being charged to consider an arrest on the information made available to them.

87. The Appellant relies on the answers of DS Judge in cross-examination, which were designed to procure an answer that there had been a direction or an instruction.

Reference is again made to the answers "yes" quoted above, namely that DS Judge said in answer to the question as whether he had caused the Appellant to be arrested by completing the HPAR. As noted above, the answer was not simply "yes", but *"Yes, I collated the information and reviewed the information and evidence and arranged for him to be arrested, yes."* When asked whether he accepted responsibility for the arrest, DS Judge did not simply say *"yes"*. It was *"Yes, I reviewed the evidence and collected it together and asked for him to be arrested."* In context, this did not depart from the usual procedure that the investigator would collect the information and make a request, but that was not an instruction or a direction, but a request for an arresting officer to make an arrest. In context, that meant that the arresting officer would consider whether they had information to suspect that the person had committed the offence, whether there were reasonable grounds for the suspicion and whether it was necessary to make an arrest. This did not give rise to the arresting officer being the subject of a demand or an instruction or the like. It was the suspicion of the arresting officer which was pivotal.

88. A similar submission was made in *Davidson* by the unsuccessful claimant based on the language used by the store detective. Her expectations did not make the police her agent. Sir Thomas Bingham MR said the following at p.601 b-c as follows:

> *"the high watermark of the appellant's case derives from answers which Mrs Yates gave when she was cross-examined by counsel for the plaintiff. In the course of a series of answers she said that she expected information given by a store detective such as herself to carry weight with police officers she intended and expected the police officers to act upon it. They had always done so in the past. She had never known of any occasion when they had failed to do so and accordingly she regarded the arrest as made on her behalf or for her.*
>
> *We, nonetheless, as I repeat again, have a case in which the constables, according to them, exercised their own judgments and affected the arrest pursuant Section 24(6) of the 1984 Act."*

The Judge in *Davidson* found that this did not give rise to the arresting officer acting on instructions, and so he withdrew the case from the jury. On those facts, Mrs Yates simply laid information before the police officers and did not direct or procure the arrest.

89. I do not accept that the language used by DS Judge meant that PC Sanders was acting on his instructions, any more than that the language of Ms Yates in *Davidson*, meant that the arresting officer was acting on her instructions. The evidence does not prove that PC Sanders was acting on the instruction or direction of the briefing or investigating officers. On the contrary, PC Sanders made an assessment based on the information available to her at the time. She exercised a discretion to effect the arrest.

90. In the instant case, the position is as follows:

(i) a senior investigating detective has, as a result of enquiries undertaken, come to suspect a particular individual of having committed an offence and has requested that a response officer arrest that individual;

(ii) in order to determine whether the ensuing arrest and detention is lawful or whether there has been a false imprisonment, the court must answer the questions the *Castorina* questions (as adapted), all of which are focus on the mind of the arresting officer (see *Hanna v Chief Constable of the RUC* [1986] NI 103 at 108D-E; *O'Hara v Chief Constable of RUC* [1997] AC 286 at 302H; *Parker v Chief Constable of Essex Police* [2017] EWHC 2140 (QB) at [19]-[20]);

(iii) there may be other contexts or situations in which enquiries have to be made of the person who provided information to the arresting officer (the 'briefing party') e.g. if it is said that the briefing party lied or the arresting officer did not exercise a discretion (because they were acting on instructions) or exercised a discretion in a *Wednesbury* unreasonable manner (see *Copeland v Commissioner of Police of the Metropolis* [2014] EWCA Civ 1014; *Davidson v Chief Constable of North Wales* [1994] 2 All ER 597);

(iv) the arresting officer is entitled to effect the arrest without first-hand knowledge and to rely upon information provided from other officers, (typically, but not necessarily, a briefing officer), provided that it comes from a source on which it is reasonable for the arresting officer to rely. It must be sufficient information so that the arresting officer has reasonable cause to suspect before the power is exercised.

(v) those situations are not present in this case, where there is no suggestion that DS Judge (the briefing officer) acted in bad faith e.g. by fabricating information. Further, it is a case where the arrest was made solely by the arresting officer, who exercised her discretion and did not act on the order or instruction of the briefing officer or anyone else.

VIII Ground 1: In finding that PC Sanders had objectively reasonable grounds to suspect the Appellant was guilty of the offence of rape of the Complainant, the trial judge erred in law and/or there was a serious procedural or other irregularity.

91. The Appellant submitted that the HPAR did not contain information capable of giving rise to a reasonable suspicion that the Appellant had committed a rape on the Complainant. Instead, it contained information of the description of the Appellant which did not match the description of the man who was said to have raped the Complainant. The information could not even be said to have amounted to scant information. Insofar as it was scant, the Appellant submitted that (a) *O'Hara* was not authority for saying that scant information sufficed, and (b) it was contrary to *O'Hara* for the Judge to have found that PC Sanders could take into account the fact that the information came from senior officers, namely DS Judge and Inspector Cannon and was put on to the PNC.

92. The Appellant submitted that in *O'Hara* at p.293E-G, the Court had said that there could be no reliance on the fact that the information was provided by a senior officer. The precise objection is upon *"the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion".*

93. In my judgment, the Judge was entitled to conclude that the honestly held suspicion of PC Sanders was objectively reasonable, lawful and correct. Reference is made especially to paras. 14, 15, 30 and 37 above and her judgment at pages 46-50 of the transcript of 28 January 2022. Without detracting from the totality of the information above, the Judge was entitled to rely upon the following facts and matters, namely:

(i) The information provided to PC Sanders by other officers and especially in the HPAR as set out above;

(ii) PC Sanders was entitled to have regard to the source of the information on the HPAR, namely that it came from Operation Diamond, that is to say the Criminal Investigations Department with responsibility for investigating serious sexual offences.

(iii) PC Sanders knew that as this suspect had been circulated as 'wanted' which told her that an Inspector would have authorised his circulation for arrest;

(iv) PC Sanders had a CCTV still taken just before the offence had been committed in which the suspect was wearing a red top. She also had a second photograph of two men, one of whom was, according to the HPAR, Alexandhros West-Andrigianakis. This provided a good view of the suspect's face.

(v) At the address to which PC Sanders had been directed, she saw a male who matched the second photograph and he confirmed to her that his name was Alexandhros West-Andrigianakis.

94. As regards *O'Hara*, the Appellant's submissions of law are rejected. In particular, *O'Hara* outlaws the arresting officer acting on the basis of "*the mere fact that an arresting officer has been instructed by a superior officer".* The prohibition is against the mere fact of being instructed by a superior officer. Nevertheless, the arresting officer is entitled to have regard to the source of the information and the context in which it provided: see the reference above to *O'Hara* at p.298E. The information in *O'Hara* was scant and on its own facts sufficient, but the information in the current case is far more extensive.

95. Contrary to the submission on behalf of the Appellant, the HPAR, as described above, contained information which could found a reasonable suspicion against the Appellant. This was not a case where the arrest took place on the basis of an instruction from a superior officer. It was based on an evaluation of the arresting officer of the information contained in the HPAR, its context and the decision of PC Sanders that there was a reasonable basis for suspicion which she relied upon to arrest the Appellant.

96. Further, this was not a case where the information was scant, albeit that in the event that all of the information available to the briefing officer had been included in the HPAR, the information would have been greater.

97. The Appellant submitted that PC Sanders did not have a reasonable ground for her suspicion based on the fact that the Appellant did not match the description of the suspect. In that regard, the information provided by PC Sanders, referred to at para. 31 above provided an answer to this point, namely about the experience of the police about descriptions being frequently mistaken. The jury was entitled to accept this in connection with the honesty of the suspicion and the Judge was entitled to accept it in respect of the reasonable grounds for the suspicion.

98. The Judge reached a conclusion which was correct. There was no procedural or other irregularity. In this context, the appellate court notes that the Judge heard the witnesses and among others DS Judge and PC Sanders. This is not an advantage available to the appeal court. It applies not only to findings of primary fact, but to the evaluation of the facts and to inferences drawn from them.

99. This was a case where the jury reached conclusions as to the honesty of PC Sanders' suspicion and the Judge reached as to the existence of a reasonable basis for such suspicion. Those findings have to be accorded the respect for such finding referred to in *Fage*. There is no reason to depart from those findings which were properly arrived at and are supported by the evidence. I am satisfied that Ground 1 should be dismissed.

IX Ground 2: In finding that it was not necessary to leave a question to the jury on whether DS Judge honestly suspected the Appellant was guilty of the offence of rape of the Complainant on the basis that it was not necessary for the Respondent to prove that matter in order to discharge the Respondent's burden in false imprisonment, the trial judge erred in law and/or there was a serious procedural or other irregularity.

100. The Appellant submitted that the arrest was accepted as having been caused by DS Judge and for which DS Judge was responsible because of the cross-examination referred to above in that regard. The Appellant submitted further that PC Sanders was wholly reliant on the HPAR and had not conducted any research on her own. The Appellant submitted that the Judge was in error in assuming that in every case, it was only the mind of the arresting officer which had to be determined. The reliance on *Hanna* was misplaced because it was in conflict with *Copeland* which was binding on the Court. In any event, *Hanna* involved a conflation of the statutory requirement for a lawful arrest with what was required by the law of false imprisonment. It was therefore submitted that the Judge ought to have left the question of whether DS Judge honestly suspected that the Appellant was guilty of rape to the jury.

101. The Judge ruled that it was not necessary to leave to the jury a question as to whether DS Judge had an honest suspicion. Everything depends on the facts of the particular case. An analysis of the case law is to the effect that generally where an arrest is made by an arresting officer following a request to arrest from a briefing officer, the relevant person's suspicion is that of the arresting officer and not of the briefing

officer or anyone else within the police force. There are exceptions such as *Copeland* where the briefing officer had lied. There might be a case where the arresting officer simply acted on an instruction without any appraisal and exercise of a discretion on their part or exercised any discretion in a *Wednesbury* unreasonable manner. The evidence of PC Sanders, for example, the evidence quoted at paragraph 28 above, was to the effect that she considered the evidence which she had and worked out for herself whether there were reasonable grounds on the information which she had and exercised the discretion properly herself.

102. The case law has been set out above. The Judge applied the case law correctly. In particular, she found and/or she was entitled to find in the instant case that:

(i) DS Judge put together the HPAR and requested, and obtained, authorisation for Alexandhros West-Andrigianakis to be circulated as 'wanted' on the PNC;

(ii) DS Judge had in the usual way provided an HPAR for an arresting officer, and it was for the arresting officer to decide whether to make the arrest and, if appropriate, to arrest the suspect;

(iii) there is no requirement for the arresting officer to conduct their own research: on the contrary, as the cases such as *O'Hara* make clear, the arresting officer is entitled to rely on the information in the briefing subject to considering its source and context;

(iv) there was no reason on the facts of this case not to follow authorities including *Hanna, O'Hara* and *Alford*. That did not exclude the possibility of cases where there could be liability also on the briefing officer, but that did not apply in the circumstances of the instant case.

(v) there was no reason to depart on the facts of the case from the starting point that the relevant suspicion was that of PC Sanders as the arresting officer;

(vi) on the facts of the instant case, it was not therefore incumbent on the Respondent to prove that DS Judge or anyone other than PC Sanders had suspected the Appellant of the offence, and the Judge was entitled not to put the question of whether anybody other than PC Sanders honestly suspected that the offence had been committed by the Appellant.

103. The authorities referred to above show that it is a principle at common law that "*There may be false imprisonment by A, although it was B who took the person into custody and B acted lawfully, provided that A directly caused B's act and that A's act was done without lawful justification*." (see Toulson LJ in *TTM* quoted in *Copeland* at [20]).

104. What amounts to an 'act done without lawful justification' is plainly a fact-sensitive and context-sensitive question, and requires, amongst other factors, consideration of who parties A and B are (whether one is a civilian, another a police officer, or both are police officers) as well as the way in which A is said to have 'caused' B to take the person into custody.

105. The case law referred to above including the cases of *Copeland* (deliberately false information provided by one officer to another), *Davidson* (simply information provided to the police by a store detective) and *Alford* (an inadvertent failure to pass on a favourable report) are not authority for the proposition that, in the context of an investigating officer providing a briefing to an arresting officer, it is necessary for the Chief Constable to prove that that the briefing officer honestly suspected the person of an offence.

106. There are other cases where this does arise. It might arise where there is a specific allegation that the conduct of the briefing officer was such that the arrest might be characterised as that of that person as well as that of the arresting officer e.g. the case of the lying briefing officer or the specific instruction of the arrest by the briefing officer and where the arresting officer acts on it without an exercise of discretion. Neither was this a part of the pleaded case nor did it arise on the basis of the evidence before the Court. DS Judge had been challenged as to the honesty of his suspicion, as set out in the extract from his evidence at paragraph 26 above, but one question by itself did not make the honesty of DS Judge into an issue: in fact, DS Judge denied that his suspicion was not honest, and the answer was not challenged or tested. The matters set out about the burden of proof in paragraph 78 above also apply: in the Judge's words, these cases are not a "moving feast" such as to fasten on the mind of each and every person involved in the process from investigation to arrest or thereafter.

107. The Judge was therefore correct to rule that there was no requirement to ask the jury whether DS Judge honestly suspected that Alexandhros West-Andrigianakis had committed the offence. This was not a case where the honesty of suspicion to be tested was that of the briefing officer and not that of the arresting officer. The decision of the Judge was not wrong, and there was no serious procedural or other irregularity. It follows that Ground 2 is dismissed.

X Introduction to Grounds 3 and 4

108. These grounds fasten on the question of whether the Judge was right to find that DS Judge had reasonable grounds for suspicion (Ground 3) and whether the police had reasonable grounds for the belief as at the time of the arrest, bearing in mind the second identification on 9 June 2014 (Ground 4).

109. There is a curiosity as to why the Judge went on to consider these matters in view of her decision that it was in the mind of the arresting officer, in this case, PC Sanders, which was the relevant mind to consider. The effect of the analysis in respect of Ground 2 might be thought to obviate the need to consider not only whether the suspicion of DS Judge was honest, but also whether he had reasonable grounds for suspicion.

110. The context in which the Judge did consider these matters was that the respective parties submitted that the issue of DS Judge's reasonable grounds for suspicion should be decided by the Judge for different reasons. In the case of the Appellant, the corollary of its submissions that the Respondent had to prove the state of mind of others involved in the arrest was that there had to be a finding not only as to whether

PC Sanders had reasonable grounds for her suspicion, but also of other police officers, and particularly DS Judge for his suspicion. In the case of the Respondent, they wanted to have a finding in respect of DS Judge because it might be relevant to damages in the event that DS Judge did have reasonable grounds for suspicion.

111. This commonality may have led the Judge to make a finding about whether DS Judge had reasonable grounds. It appears that there was a broader context in which the finding was made. In the course of the evidence, there emerged a controversy as to the effect of the second identification on 9 June 2014. The submission was made that, if there were reasonable grounds before then, there could not be reasonable grounds thereafter. The Judge did make a finding on whether this was the case which might have been relevant in the event that the burden was on the Respondent to prove the existence of reasonable grounds at the time of the arrest either in respect of DS Judge specifically or within the police force.

112. It is not clear that these findings were necessary. On the basis that everything turned on the mind of the arresting officer alone on the facts of this case (see especially the analysis in respect of Ground 2), and on the basis of the pleaded cases, there was no basis for vicarious liability of the Respondent referable to DS Judge or any other officer, named or unnamed. Whether this was the case or not, the Judge did decide the matters in Grounds 3 and 4. If she was right in her conclusions, then there were reasonable grounds on the part of DS Judge, and the second identification did not bring to an end those reasonable grounds. Grounds 3 and 4 involve an analysis of whether the Judge was wrong so to find.

XI Ground 3: In finding that DS Judge had objectively reasonable grounds to suspect the Appellant was guilty of the offence of rape, the trial judge erred in law, and/or there was a serious procedural or other irregularity.

113. The Appellant submitted that the Judge was in error in failing to consider the relevance of the suspect for the offence of rape not matching the description provided by the Complainant. It was submitted that it could not be objectively reasonably to suspect the Appellant of an offence of rape when the description was of a man who did not look like the Appellant.

114. The Appellant also submitted that there were other shortcomings including:

(i) the CCTV was grainy and of poor quality in which it was not possible to see the face of the man in the red top;

(ii) the fingerprint evidence only showed connection with the BMW at some time in the past, but not directly linked to the rape offence;

(iii) the evidence of DCP was problematic because he was only 50% certain, and it was only about the purchase of the BMW and not directly to the rape;

(iv) the reference to intelligence obtained from the Staffordshire Police did not directly link to the rape offence.

115. In order to answer these points, it is necessary to consider the evidence as a whole and to consider whether there was sufficient to justify the Judge's conclusion that it was objectively reasonable for DS Judge to suspect Alexandhros West-Andrigianakis of the offence under investigation:

(i) NT, who knew the Appellant personally, had identified him as the man in the red top in the CCTV still taken from just before the offence was committed. The CCTV was sufficiently distinct and there was also a connection between the CCTV picture and the other still photograph of the two men;

(ii) the Appellant's fingerprint had been found in the green BMW in which the rape took place. The occurrence enquiry log entry Action 15 dated 7 June 2014 said that this evidence did not directly link the Appellant to the rape offence and there may have been an explanation for presence of the fingerprint, but it did show a connection with the BMW car;

(iii) the statement of DCP, second hand car salesman, that he was 50% certain that the male in a photograph shown to him by police was a man who had been involved in the purchase of the green BMW. By the time of trial it was not possible to know, but was assumed, that the photograph shown to DCP was a photograph of Alexandhros West-Andrigianakis, as this was the only sensible interpretation according to log entry Action 15;

(iv) intelligence obtained from Staffordshire Police of involvement of Alexandhros West-Andrigianakis in another matter.

116. The first identification leading to the fingerprint evidence in respect of the Appellant would have led to further forensic investigations and interviews including recovering mobile phones, clothing or any other information or evidence that would help show that he was responsible or rule him out.

117. As to the fact that the description given by the Complainant, and her friend, of the male suspect did not match the Appellant's appearance in certain ways, various police witnesses explained that people's descriptions are commonly inaccurate, and this is especially the case if they were intoxicated and/or frightened and/or shocked and/or distressed. The evidence of DS Judge is set out at para. 26 above and PC Sanders in this regard is summarised at para. 31 above. Therefore, whilst the description given by the Complainant and her friend did not, in certain ways, match the photograph that NT provided, that is one factor to be taken into account, and balanced against the others.

118. In response to the Appellant's submission that the fingerprint and DCP's statement linked the Appellant to the vehicle only, and not the rape; that may be true, but the vehicle was the one used in the commission of the rape, and therefore it was reasonable to suspect of the rape someone who was connected with the purchase of the vehicle, and whose fingerprint was in the car.

119. Bearing in mind the low threshold required to prove the reasonable suspicion required, in my judgment, the Judge was entitled to be satisfied that it was proven that DS Judge did have objectively reasonable grounds to suspect that the Appellant was

guilty of the offence. I shall refer to the finding that the second identification did not remove these reasonable grounds in the consideration of Ground 4 below.

120. The Judge arrived at conclusions which were not wrong or procedurally or otherwise irregular. Those findings have to be accorded the respect for such finding referred to in *Fage*. There is no reason to depart from those findings which were properly arrived at and are supported by the evidence. The Judge had the advantage of seeing and hearing the witnesses. She identified the law correctly as regards the meaning of reasonable suspicion and she applied it correctly to the facts of the instant case. The judgment was not wrong nor was there a serious procedural or other irregularity. I am satisfied that Ground 3 should be dismissed.

XII Ground 4: In finding that it was not necessary for the Respondent to prove that there existed reasonable grounds for suspicion at the time of the Appellant's arrest on 10 June 2014 in order to discharge the Respondent's burden in false imprisonment, alternatively that there were still reasonable grounds to suspect the Appellant was guilty of the offence of rape of the Complainant, the trial judge erred in law and/or there was a serious procedural or other irregularity.

121. The Appellant submitted that even if DS Judge had objectively reasonable grounds to suspect the Appellant of the rape, it could not have been objectively reasonable once there had been the second identification and the original identification had fallen away. It was for the Respondent to discharge the burden in false imprisonment which on the facts necessitated consideration of whether there was lawful authority to detain the Appellant as at 10 June 2014 when he was arrested.

122. The sequence of events was as follows:

(i) On 7 June 2014, NT was shown the CCTV still and identified the male in the red top (who was indeed the perpetrator of the rape) as Alexandhros West-Andrigianakis.

(ii) On 7 June 2014 a fingerprint taken from the inside of the green BMW was identified as being Alexandhros West-Andrigianakis's.

(iii) On 7 June 2014 DS Judge, suspecting him of the offence, asked that Alexandhros West-Andrigianakis be circulated on the PNC as wanted. A HPAR was accordingly prepared to accompany the circulation on the PNC that Alexandhros West-Andrigianakis was wanted.

(iv) Meanwhile police continued to carry out enquiries.

(v) On 9 June 2014 at around 19:26-19:39, as part of those enquiries, DC Daniels viewed the CCTV footage with NT; the latter changed her mind identifying the man in the red top as someone called Bernard, not Alexandhros West-Andrigianakis.DC Parkins was also present during the viewing.

(vi) On 10 June 2014 PC Sanders was given the HPAR by her sergeant and she arrested the Appellant at around 17:29.

123. The issue of the change in NT's identification of the man in the red top in the CCTV was not identified as an issue in the Particulars of Claim (or the subject of any amendment to the Particulars of Claim), or identified as an issue in the Appellant's skeleton argument for trial. Partly as a consequence of it only emerging as an issue at trial, there was little evidence at trial on what happened to the information that NT had now identified the man in the red top in the CCTV as Bernard, not Alexandhros West-Andrigianakis.

124. There was evidence from DS Judge who agreed with DS Rai that the identification booklet would have been put in 'someone's' in-tray, probably his, as SIO, and then he would have then reviewed it. He said that it was not possible now to remember when he would have known about NT's change of identification, but it would have been at some point after 20:00 on 9 June 2014 and before 14:51 on 17 June 2014.

125. Therefore it was impossible, on the evidence, to say who within the team investigating knew about NT's second identification and at what point.

126. DS Judge's evidence was that if he had known about the second identification prior to the arrest, that would not in his mind have removed the reasonable grounds for suspicion: there would then have been suspicion about more than one person, requiring further investigation against both of them.

127. The Judge expressly accepted that evidence. The second identification of NT did not mean that objectively there were not reasonable grounds to believe that the Appellant had committed the offence in that the building blocks still remained in play: see paras. 1 and 6 of the judgment of the Judge referred to at paras. 44-46 above.

128. It still remained the case that the first identification had led to the fingerprint evidence in respect of the Appellant, which in turn would have led to further forensic investigations and interviews including recovering mobile phones, clothing or any other information or evidence that would help show that he was responsible or rule him out.

129. The first part of Ground 4 fastens on the burden of proof. It was accepted by the Respondent that it had to prove the existence of reasonable grounds for suspicion in the mind of the arresting officer as at the time of the arrest. However, the Appellant's case was that the reasonableness of the grounds for suspicion had to be proven by reference not just to the knowledge of the arresting officer and her mind, but more generally. For the reasons set out above in the discussion of Ground 2, the Judge found that the burden of proof was satisfied by reference to the state of mind of the arresting officer. The Judge also found that there was no requirement to have free-floating objectively reasonable grounds. That analysis was correct for the reasons set out in the analysis of Ground 2 above.

130. In fact, the Judge considered and reached conclusions which were not wrong or procedurally or otherwise irregular that (a) DS Judge had reasonable grounds for suspicion as of 7 June 2014, and (b) those reasonable grounds had not fallen away whether because of the second identification or at the time of the arrest.

131. The Judge was entitled to make those findings which were not wrong or procedurally or otherwise irregular, having heard and seen the witnesses. There is no reason to depart from those findings which were properly arrived at and are supported by the evidence. Here again, there was no error of law. The judgment was not wrong nor was there a serious procedural or other irregularity. I am satisfied that Ground 4 too should be dismissed.

XIII Conclusion

132. The Appellant has failed to identify errors of law on the part of the Judge. The Judge applied the law correctly and made findings of fact including evaluating the facts and drawing inferences properly. Both as regards matters of law and fact, she did not err now was there any or any serious procedural or other irregularity. It follows that each of the grounds are dismissed.

133. Finally, it remains to thank Counsel who presented their respective cases with considerable skill and expertise.