



Neutral Citation Number: [2023] EWHC 1220 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

CASE REF: QB-2020-002235
Date: 22 May 2023

Before:

HER HONOUR JUDGE HOWELLS
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Between:

(1) MASTER BRONTE BROWN
(2) MISS LACEY BROWN
(children suing by their grandmother and Litigation Friend
TAMMY SELLERS)

Claimants

-v-

(1) MR COSMIN SESTRAS
(2) AVIVA INSURANCE PLC
(3) MS DANIELLE SELLERS
(4) AXA INSURANCE UK PLC

Defendants

Approved Judgment

Introduction

1. On the 16th of July 2017, at about 6.50pm a serious road traffic accident occurred on the southbound carriageway of the A10 between Hertford and Hoddesdon. This is a dual carriageway, providing two lanes of travel in each direction. The first Claimant, Bronte Brown (who I will refer to as the claimant for the balance of this judgment), suffered life-changing injuries in that accident. At the time he was a rear seat passenger travelling in a Peugeot car driven by his mother Ms Danielle Sellers (the 3rd Defendant). Also in the car, sitting in the front passenger seat was Adrian Graham, his mother's then partner. Bronte sat behind Mr Graham. His sister Lacey sat in the rear middle seat. In the rear offside passenger seat was Bobby Leigh Graham, the son of Adrian Graham. Bobby was then almost 13. The undisputed evidence is that the group had enjoyed a family day together, of going swimming and then watching a film. They were travelling to take Adrian Graham and Bobby Leigh Graham home. Bronte, then aged 9, was annoyed by his shoes being uncomfortable; he therefore unstrapped himself momentarily from his seatbelt, to remove his shoe. He was told off by his mother, the driver. At about the same time the occupants in the Peugeot, which was travelling in the outside of the two lanes, became aware of a dark car which was right up behind them, effectively tail-gating them. Ms Sellers, Mr Graham and Mr Leigh Graham all identified this as a black Mercedes Benz vehicle (and provided other information as to its identity). That dark vehicle then moved quickly into the inside lane, behind a lorry that was positioned there, and cut up in front of the Peugeot in a sudden undertaking manoeuvre. Unfortunately, Ms Sellers lost control of her vehicle, which crossed into the inside carriageway, left the road, and was thrown down the embankment into a nearby field. Young Bronte sustained the most serious of injuries. The dark car which had created the hazard, drove off.
2. It is the claimant's case that Mr Sestras, the first defendant, insured by the 2nd defendant, was the driver of the dark car in question, which was his own Mercedes Benz vehicle. It is alleged that it was his driving, and this dangerous undertaking manoeuvre, which was the cause of the accident. Further, or in the alternative, it is alleged in the pleaded case, that Ms Sellers, the 3rd defendant insured by the 4th defendant, is in part to blame for failing to control her vehicle.
3. However, Mr Sestras denies that he was in any way involved with this accident. Although he accepts that he was driving his black Mercedes Benz on the A10 in or around that location at about the time of the collision, he knows nothing about this incident and was not involved in any way. It is a case, he says, of wrongful identification. The dark car was not his Mercedes, he was not involved with any accident, nor did he drive in the manner alleged. He does not dispute that the manner of driving alleged against the driver of the dark car would have been dangerous; but it was, he says, the driving of an unidentified other. His car is fitted with driver assist technology which he alleged in his pleaded case, meant it could not tailgate in the way described. Further, or alternatively he blames the 3rd Defendant for losing control of her vehicle.
4. Having heard and considered all of the relevant evidence on the trial of liability in this matter the following issues now require my determination:
 - a) Has the Mercedes driven by the first defendant been correctly identified as involved in the accident?
 - b) If 'yes' to a., was the accident caused by the negligent driving of the first defendant: D1?
 - c) Was the accident caused by the negligent driving of D3?

The law

5. I remind myself that the Claimant has the burden of proving his case on the balance of probabilities. He has to establish that the dark car was driven by the 1st defendant, that the driving of the 1st defendant fell below that of a reasonably competent driver, and that such caused the accident. Further, or in the alternative, he has to prove, again on balance, that

the driving of his mother in failing to control her vehicle or otherwise avoiding this accident, fell below the appropriate standard.

6. The evidence that I have considered in this case is a combination of lay and expert evidence. It is also a mix of oral evidence, written agreed evidence and hearsay evidence both written and recorded.
7. A critical part of the hearsay evidence is that of an anonymous caller to the police. I have heard the recording of that telephone call and considered the transcript. On the evening of the accident, at 22.37 (less than 4 hours post-accident), the police force received an anonymous call which they traced to a phone box in Cheshunt. That caller described being a witness to the accident in question, seeing the dark car, which he identified as a Mercedes which was "jet black" with blacked out windows, undertaking the claimant's vehicle and driving in a dangerous manner. He saw the "small vehicle" (the claimant's, although the caller thought it might have been a Corsa or other small hatchback) lose control and leave the road. He saw the Mercedes speed off. He followed that Mercedes vehicle for about 4 to 5 miles, he said, to a roundabout in Harlow, and managed to take down the vehicle's registration number. The registration number provided by the anonymous witness was of the 1st Defendant's black Mercedes Benz (which had blacked-out rear windows). The caller made it clear that he would not be willing to provide his personal details or be a witness in any court proceedings.
8. As the caller was not traced, no witness statement was obtained from him and, of course, he was not called to give evidence. As such the claimant served a Civil Evidence Act hearsay notice seeking to rely upon the recording and transcript of that phone call.
9. It is accepted by the parties that the hearsay evidence is admissible in evidence, but the weight which can be given to it must be weighed with care. As stated in *Welsh v Stokes* [2008] 1 WLR 1224 by Dyson LJ the correct approach was to consider those factors set out in section 4 of the Civil Evidence Act 1995 which provides:

"4 Considerations relevant to weighing of hearsay evidence.

(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following—

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

10. Further Dyson LJ stated:

"22 Even if the hearsay evidence were the only evidence on which the

claim was based, I would not accept that this was necessarily a reason for giving it no weight. It would depend on all the circumstances. I accept that there will be cases where it is so unfair to hold a defendant liable solely on the basis of hearsay evidence that a court should place little or no weight on the evidence. Consideration of the factors stated in section 4(2) will point the way, but will not necessarily be determinative. In some cases the defendant may be able to adduce evidence to contradict, or at least cast doubt on, the hearsay evidence. But there will also be cases, like the present, where the defendant is not in that position. Apart from the unidentified motorist and the claimant, there were no witnesses to the accident. In such a case there may be said to be unfairness to the defendant in having to face hearsay evidence which he cannot directly challenge. On the other hand, there would be unfairness to the claimant to place no weight on the hearsay evidence, since without it her claim would inevitably fail.

23 The decision what weight (if any) to give to hearsay evidence involves an exercise of judgment. The court has to reach a conclusion as to its reliability as best it can on all the available material. Where a case depends entirely on hearsay evidence, the court will be particularly careful before concluding that it can be given any weight. But there is no rule of law which prohibits a court from giving weight to hearsay evidence merely because it is uncorroborated and cannot be tested or contradicted by the opposing party. I do not consider that the statements in the authorities relied on by Miss Rodway in her skeleton argument support such an extreme proposition.”

11. I accept that considerable care must be exercised in consideration of hearsay evidence. Such evidence has not been tested in cross-examination. The motivation behind the provision of such evidence and the reasoning behind the unwillingness to be involved in police or other proceedings has not been clarified. There are certainly arguments as to how much weight can properly be given to such evidence. In assessing the hearsay evidence in this case, I adopt the approach endorsed in *Welsh* and will address the relevant parts of s4 CEA 1995 later in this judgment. I recognise in doing so that the legal and evidential burden remains throughout on the claimant in this matter. As Dame Janet Smith in *Lambert v Clayton* EWCA Civ 737 at Paragraph 39 stated:-

“If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties. But that is one of the purposes behind a burden of proof; that if the case cannot be demonstrated on the balance of probabilities, it will fail.”

The facts of the accident and evidence before the court

12. I heard oral evidence from Mr Adrian Graham and Mr Bobby Leigh Graham who were passengers in the claimant's vehicle. I heard from Ms Jade Hope who was driving behind the claimant's car, witnessed the accident and stopped to help afterwards. I heard the oral evidence of PC Duke, who became the officer in charge of the case, and Mr Oliver who was the call operative who received the anonymous call. I have considered the witness statement (produced with a Civil evidence Hearsay notice) of Mr Mark Bevan, another driver. I have considered the agreed written evidence of other witnesses who came upon the aftermath of the accident but who do not provide any evidence as to the identity of the dark vehicle.
13. Unusually I have also had the benefit of hearing the recording of Mr Graham's original 999 call to the police. I have seen the video ABE recording of the interview with Mr Bobby Leigh Graham (who at the time was nearly 13). I have seen the bodycam footage of the arrest of the first defendant, which took place just after midnight on the night of the accident and the recording of his first police interview (the second one having apparently been mislaid)
14. On behalf of the 2nd and 3rd Defendant, I heard the oral evidence of Mr Sestras, his wife Mrs Camillia Sestras and the two passengers in his vehicle who were family friends Mr and Mrs Catinca (nee Zaharia). All of the occupants of the 1st defendant's vehicle are Romanian and, as English is not their first language, Mr Sestras and Mr Catinca gave evidence through an interpreter (Mrs Sestras and Mrs Catinca had the services of the interpreter available to them if they needed anything explained, which on occasion they did).
15. Finally, I heard the oral evidence of Ms Sellers, the 3rd defendant
16. There was expert evidence called in this matter, to which I will refer later.
17. I accept that all of the lay witnesses are giving evidence trying to recall an event which occurred almost 6 years ago. I take into consideration that memory can be affected by the passage of time and that memories can fade. I also recognise, as has been set out in many cases, including *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC 3560 (Comm) as summarised by Stewart J in the case of *Kimathi and others v Foreign and Commonwealth Office* (2018) EWHC 2066 (para 96) the following:
 - "We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.
 - Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e., memories of experiencing or learning of a particularly shocking or traumatic event.
 - Events can come to be recalled as memories which did not happen at all, or which happened to somebody else.
 - The process of civil litigation itself subjects the memories of witnesses to powerful biases.
 - Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.
 - The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful purpose... But its value lies largely... in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth

I recognise that this case is not a commercial one (as in Gestmin), nor one which is document heavy. Nevertheless, taking the approach above, I remind myself of the fallacy of human recall particularly where events occurred a long time ago. In this case, the accident happened over the course of seconds only. It was a profound trauma to those involved. Where accounts were given contemporaneously or close in time to the accident, I conclude that usually they are more accurate and reliable than ones which may have been considered over a number of years since.

18. Having said that, I turn to the lay witness evidence and how it was presented.
19. Mr Adrian Graham was the front seat passenger in the vehicle. He provided details of the accident in the 999-call made immediately post-accident, an account was recorded in the police collision accident report, and he completed a police witness statement. His witness statement for the purpose of this case was prepared only shortly before the trial (the relationship between him and Ms Sellers ended shortly post-accident and he had not been traced until recently). Mr Graham was an impressive straightforward witness who was clearly doing his best to assist the court. The following points are of particular note from his evidence:
 - He spoke to police officers at the scene of the accident before he was taken to hospital with his son.
 - He confirmed in the first account provided to police (in the collision report which was taken at the scene) that a black Mercedes had been tailing them had gone into the inside lane and then shot in front of them. As such he identified the vehicle as a black Mercedes within minutes of the accident.
 - In his oral evidence he confirmed that the black car was literally right behind them, swerving (as if to get past).
 - He did not see who the occupants of the car were.
 - "I saw it bomb around us: swerve out and swerve back in. The way it was coming around us was quite vigorous. I saw it make a move. I was looking at that point."
 - He recognised the car as a Mercedes and told the police (probably at the scene but maybe at the hospital) that it was a 15 plate. This was within about an hour of the accident.
 - When he made his statement to the police about 6 weeks later he gave an understandably fuller account of the accident; he described the actions of the Mercedes in an entirely consistent way.
 - He said at that stage that it was a 15-plate black Mercedes with 5 doors. It had blacked out rear windows.
 - He describes a conversation in the car about the driving of the Mercedes, with Ms Sellers expressing alarm as to how it was being driven, aggressively and right up behind them.
20. The impression gained from Mr Graham's evidence overall is that he had a clear and unobstructed view. His description of the vehicle being a black 15 plate Mercedes was given immediately post-accident. More details of tinted windows and 5 doors were given within weeks when the police statement was provided. He was unshaken in this description. His recollection has, I find, remained clear despite the passage of time and the pressure of this litigation.
21. I heard and was impressed by the evidence of Mr Bobby Leigh Graham. At the time of the accident, he was nearly 13. He came to court as a young man of 18, interrupting his A level revision to give evidence. I have watched and listened with care to the video recording of the interview with Mr Leigh Graham, which took place about 5 weeks post-accident. He gave clear and compelling evidence in that interview. He provided an account to the police at the scene of the accident: it is recorded in the Police collision report. He also provided a witness statement only a matter of weeks before trial.
22. The following points I find to be of particular note from his evidence:

- When spoken to by the police at the scene of the accident (as recorded in the collision report) he stated that a black Mercedes had been behind them, it went between their car and the lorry which was on the inside lane, and they had to swerve to avoid the Mercedes.
 - He saw a female passenger in the Mercedes filming on a silver iPhone (he saw the Apple logo).
 - On the day he described the driver of the Mercedes as male.
 - He provided a great deal of detail when interviewed on video. It is right to say that some of the detail (the Mercedes honking its horn, the female passenger raising her middle finger) is not given by any other witnesses.
 - He provided a detailed description of what he had been doing on the day of the accident including swimming and watching a film. He described in detail the behaviour of the occupants of the car, a description which had a real ring of accuracy about it (the music playing, the interchange between the adults and children). This included describing how Bronte came to be unstrapped seconds before this collision.
 - He gave a detailed description of the car that was behind, and which overtook his vehicle: it had the Mercedes badge “on a little stick” standing up on the front of the car.
 - He thought he could see behind through the passenger side mirror originally: when the car started swerving around them he saw it from behind. In his oral evidence he said he was looking behind him.
 - He gave a detailed description of the passenger of the car behind: “So the black Mercedes started following us, the passenger was a brunette female with a silver iPhone wearing a red and blue plaid shirt” She was “quite small as a person...Caucasian...” He described her hair as being brown with hair straight down and indicated it was shoulder length.
 - The Mercedes looked like a new business style car.
 - He described a tiny lip at the back of the car, like a small spoiler.
 - This was an impressively detailed account by a young man who had been involved in a seriously traumatic road traffic accident, obtained in the weeks that followed. At that time, he was living with his mother who accompanied him to the interview. The manner in which he gave his responses was natural, unforced and had the clear ring of truth about it. In his oral evidence, Mr Leigh Graham impressed me as a careful witness.
 - In so far as it was suggested in cross examination that his evidence may have been influenced by information that the police or his father had given him, he denied that, and I accept that was entirely truthful.
 - He was clear in saying that he could not see the face of the woman passenger of the black vehicle as her iPhone was obstructing her face. (I do note that in a recent witness statement he did, however, identify her from a photograph which would have been a struggle if her face had been obscured).
 - He was asked about the clothing that the woman passenger was wearing: the photos produced by the first Defendant show Mrs Sestras on the day wearing a striped t-shirt. Mr Leigh Graham confirmed that was not what he would have described as a lumberjack or plaid jacket.
23. He was, I find, straightforward and candid in his account. He was an impressive, careful witness who made sensible concessions.
24. I find that his recall of the incident was clear. That included identifying the dark vehicle as a newish, black Mercedes, with a mascot sticking up and the font and with a lip at the back. It included describing the female passenger as smallish, white (Caucasian) with brown, straight, shoulder length hair and holding an iPhone in a position as if she were filming. He had, I find a good view through the rear of the car. Whilst accepting that not every detail of his evidence has been supported by the evidence of other witnesses, I find his evidence as to the key features above to be highly persuasive.
25. Ms Jade Hope was a witness who, I am sure was doing her best to recall the circumstances surrounding the accident but whose recall has varied over time. She was the driver of a VW

Polo heading in the same direction as the claimant (southbound). She provided a statement to the police some four days post-accident but was never asked to sign it and said that it contained some errors. Within that account she described Ms Sellers' car (the silver Peugeot car) as being immediately ahead of her and the dark car drive up its inside and cut in the gap between it and the lorry. As such, she did not describe the dark vehicle tailgating the Peugeot. This was clearly a traumatic incident for Ms Hope who stopped and tried to help the injured parties post-accident. Her only description of the offending car was that it was a large black car which she believed had 5 doors.

26. In her first witness statement for these proceedings (prepared in 2021) she again described a large black 5 door car, but there was some variation as to the position of the vehicles on approach. In a subsequent statement dated May 2022 she sought to clarify what cars were on the road and their positions. Her statement placed her vehicle in the outside lane immediately behind the Peugeot when the black car undertook them both. However, in her oral evidence Ms Hope explained that her recall now was the black vehicle had in fact pulled in between her car and the Peugeot for "a split second" but was not able to say if that was ½ a second or 5 seconds. Ms Hope was clearly trying her utmost to recall events, but the passage of time has probably done nothing to help the accuracy of her recollection. Although I accept that she is an honest witness, and had a general impression of the accident, I cannot place a great deal of reliance on her evidence as to the precise position of vehicles.
27. The agreed written evidence on behalf of the claimant from others who came upon the aftermath of the accident scene do not assist me in determining the issues in this case.
28. The evidence of PC Duke, who was the investigating officer, produced a number of police documents including the transcripts of interview of Bobby Leigh Graham and Mr Sestras (the 1st Defendant). He had provided witness statements for both the claimant and the 4th defendant. He was questioned as to the printout from the "Storm system", which was the recording log upon which events are live recorded. He also gave evidence as to the presence of the automatic number plate recognition cameras (ANPR). It was accepted by all parties that the first defendant, Mr Sestras's vehicle, which was a black 5 door 15 plate Mercedes with a mascot standing proud on the bonnet, tinted rear windows and a small lip or spoiler on the rear, was photographed on a ANPR camera: PC Duke's evidence was that the precise location of these cameras is not revealed. However, upon receiving the registration plate details from the anonymous caller on the evening in question the following actions were taken by the police: *"The number plate can then be instantly checked against database records. We carried out ANPR analysis and convoy analysis which showed vehicle registration KM15 PLJ (which is the 1st defendant's black Mercedes) to be in the location at the time where the incident took place"* As to the precise location of that camera, PC Duke accepted in his oral evidence that the location of the 1st defendant's vehicle, at the time of the accident was "there or thereabouts" (it was an approximation) and that the ANPR evidence simply proves that the 1st defendant drove down the road where the camera was at that particular time (which is recorded on the ANPR footage within the bundle.)
29. PC Duke also confirmed, as can be seen on the bodycam footage of the arrest, that Mrs Sestras owned a silver iPhone which was seized by the police on the night (the police already having the information at that point from the account of Bobby Leigh Graham that the female passenger in the offending vehicle had been holding a silver iPhone). He confirmed that the iPhone had been sent for analysis, "to see if it was actually being used at the time." He confirmed that nothing of evidential value was found on Mrs Sestras' silver iPhone, (such as a film or photographs of the accident or its surrounding events). However, he could not say whether there was any evidence one way or the other as to whether any data or footage had been deleted: this was outside his realm of expertise, and he said that the appropriate officer who could confirm that was PC Carpenter. I note that no party has produced any evidence from PC Carpenter or any other phone analysis expert to assist with the question of whether

any data or footage had been deleted. Whilst Mr Vincent therefore challenged me as to characterising it as such, the evidence of the analysis of the iPhone is, I find, neutral as to whether it had been used for filming at the time of the accident.

30. PC Duke confirmed that steps taken to trace the anonymous witness were unsuccessful. Further, steps were taken in the course of the investigation to trace the passengers in Mr Sestras' vehicle. His witness statement said that they were uncontactable (they may have returned to Romania) and in his oral evidence he confirmed "they did not make themselves available".
31. PC Duke was present at the 2nd interview with Mr Sestras. Unfortunately, there is no available recording of that interview. It has been misplaced. In his witness statement PC Duke stated, *"A key thing that stood out was that Bobby had described his wife, the female passenger so distinctly. I asked Mr Sestras to describe his wife, which matched with the description given by Bobby. I questioned Mr Sestras how it was possible that a 12-year-old boy would be able to describe his wife in the passenger seat identically, to which he replied, 'no comment'...Mr Sestras declined to answer any questions put to him during the interview. He did however admit that he would probably have travelled that route at the time of the incident but maintained his denial of any involvement. I also put to him that his car activated an ANPR camera which would put him in and around the scene at the time to which he again said, 'no comment'.* Mr Sestras challenges that this was an accurate account, but PC Duke was clear that he recalled this interview, because of the severity of the accident and (because his role had changed) he had carried out very few police interviews since. He was clear in his recall as to the parts of the interview that Mr Sestras chose to make no comment in respect of.
32. In relation to the "Storm" reporting system (in respect of which lengthy printouts have been produced) PC Duke was able to confirm that this was a running log. The following entries are, of note:

"RZ13 - WE HAVE BEEN ADVISED THAT THE VEHICLE THAT FAILED TO STOP IS A BLACK VEHICLE - POSSIBLY A MERCEDES – LAST SEEN HEADING SOUTHBOUND ON THE A10"

"RS61 - FTS VEHICLE IS POSS A 15 PLATE BLACK MERCEDES"

"RZ13 - FURTHER INFO RE THE VEHICLE THAT FAILED TO STOP -IT WAS POSSIBLY A 15-PLATE BLACK MERCEDES."

"NK153 - FROM SPEAKING TO A WITNESS - A BLACK BMW SEEN TO BE TAILGATING THE VEHICLE THAT WENT INTO THE FIELD SHORTLY BEFORE THE RTC OCCURRED.HAVE TRIED CALLING THE INFT ON THIS ISR TO CLARIFY THE RELEVENCE OF THE ATTACHED BLACK BMW BUT DIVERTS TO MSG SAYING THERE IS CURRENTLY NO SERVICE ACTIVE ON THE NUMBER.THE INDEX OF THE BMW IS ATTACHED."

"NK153 - THE WITNESS I'M SPEAKING TO IS CALLED MARK BEVAN- HE HAS ADVISED ME THAT HE DID NOT PHONE THE POLICE - HEHAS PASSED ME THE INFO RE THE BLACK BMW."

"RP24 - SPEAKING TO AN OFF DUTY OFFICER WHO WITNESSED THIS - HE SAW THE BLACK BMW LEAVE THE SCENE AT SPEED -HE FOLLOWED IT TO TRY & OBTAIN IT'S INDEX - BUT WAS UNABLE TO CATCH UP AS IT WAS GOING SO FAST - HOWEVER HE DID SAY THAT THE BMW DID EXIT THE A10 ONTO THE A414 LEADING TOWARDS THE HARLOW DIRECTION."

33. PC Duke confirmed that there were two different police forces attending the scene. The numbers at the commencement of the above entries would identify the officers providing the information. He thought that the "RZ" and "RS" numbers were call signs from different sergeants. It was clear, he said, that information was coming from different sources. The reference to the off-duty officer had never been further traced (and he agreed that this was extraordinary, that no details had been obtained or provided).
34. Finally in re-examination PC Duke reiterated that that only 15 plate Mercedes or BMW which had been picked up by the ANPR camera which the 1st defendant was caught on, (not the one further down at Waltham Cross, where other similar cars were seen), between 1845 and 1930 on the accident day, was that of the 1st defendant. It is, however, proper to note that there are a number of junctions and turnings off the roads between the accident site and the

cameras, so that had other Mercedes or BMW vehicles been present and turned off at one of those junctions, they would not have been identified by those cameras.

35. PC Duke gave his evidence in a measured and professional manner. I did not form the impression that he was attempting to do anything other than accurately produce documents and give a true account of his involvement in this matter. He was clear in his assertion that some matters were beyond his knowledge of expertise (e.g., the checks on the iPhone). Whilst his evidence as to the “no comments” made by Mr Sestras in his second interview are not supported by any contemporaneous record, and I accept that it occurred a number of years ago, his evidence that the serious nature of this accident made his recall of the details of that interview clear, I found persuasive.
36. Mr Mark Oliver is a civilian working for the police force. He was the person who received the anonymous call on the evening of the accident (at 22.37). I confirm that I have listened to the recording of that telephone call. Of course, it is a matter for me to interpret that evidence, but I agree with the conclusion of Mr Oliver that (superficially at least) it appears to be genuine.
37. The other relevant evidence presented by the claimant in this matter is the hearsay evidence of Mr Mark Bevan. The civil evidence act notice provided by the claimant states: “Attempts to contact the witness Mark Bevan to provide a civil witness statement have been unsuccessful.” Clearly no other party has sought to call him either. As such, his police statement is produced and, I am invited to give it such weight as I consider appropriate, taking into account all of the factors set out in s4 of the Civil Evidence Act. In his police statement, signed by Mr Bevan on the day after the accident (and therefore contemporaneous), he confirms that he was driving south on the A10 when he saw a lorry on the inside lane about 100 metres ahead and a light coloured small metallic car in the outside lane (about Astra sized). He saw a modern BMW either series 5 or 7, black or dark blue, “really close” behind the car in front. “When I say close I mean stupidly close”. As both vehicles reached the lorry, he described an undertaking manoeuvre by the BMW, in a sweeping movement, managing to pull in in front of the small car and next to the lorry. He saw the small car lose control. As the BMW was not stopping he accelerated in an attempt to obtain its registration number. However, he was unable to do so: he was what he assumed to be the same BMW leave at the next slip road but could not get his registration number.
38. I have no reason to doubt that Mr Bevan was honestly telling the police what he recalled. However, in terms of the weight that I give to his evidence, I note that it has not been tested by cross examination. Although it was largely contemporaneous, there are certain aspects of his account which are unclear. He did not identify the make of model of Ms Sellers vehicle. He must have been some distance back (he says originally 100 metres), because he was unable to catch up with the offending vehicle: this will of course have affected his ability to correctly identify details of the cars in question. Whilst his hearsay evidence assists generally with the circumstances of the accident, I find it difficult to place any real weight on his identification of the offending car as being a BMW. He did not know the series. He did not know the colour. He “assumed” that the vehicle he saw leaving at the next junction was the same one. There is a great deal of imprecision in Mr Bevan’s police statement. Whilst I take his evidence into account I give little weight to his identification of make, series or colour of the offending car.
39. Mr Sestras, the first defendant, gave evidence with the assistance of an interpreter. I note that when he was arrested he was able to answer questions put by the arresting officer in English. However, his first language is Romanian, and he is entitled to give evidence in the language with which is most at ease. I have considered not only his written and oral witness evidence but also the bodycam footage of his arrest and the recording (and transcript) of his first police interview.

40. In essence it is Mr Sestras' case that this accident had nothing whatsoever to do with him. He accepts that he is the owner of a black Mercedes vehicle, a 15 plate, with the full registration number provided by the anonymous caller. His car has tinted rear windows. It has a Mercedes mascot standing upright on the bonnet and had a small lip or spoiler at the rear. His car was correctly seen on the ANPR camera because it had been driven by him on the A10 at about the time of the accident. He accepted that he must have passed the Peugeot car and the lorry at some point of his journey. However, this was, he says, a case of mistaken identity. It was not his car which caused the collision, and it was not he who had driven in the dangerous manner described.
41. Mr Sestras explained that he is an HGV driver by profession, having worked in that field for all of his working life. He bought the Mercedes (registered as new in June 2015) just over a year pre-accident. It is a fast and powerful car capable of doing 155mph. On the day in question he, his wife and two friends had been to Santa Pod to watch drag racing, a sport his wife particularly enjoys. He described the return journey to his home, in his statement, as "straightforward and normal"; "I don't remember any particularly slow cars nor do I remember getting impatient with any other vehicles. There was nothing on the journey that I recall causing me frustration or impatience". He was not, he states, in any accident, nor did he witness any. It was a shock, he said, when the police called at his house and arrested him in the middle of the night.
42. In a supplementary witness statement, Mr Sestras discussed the Mercedes Collision Assist Plus system which was operational in his vehicle: "*On the day of the accident, the system did not alert me to anything. If what is alleged is true, that I was driving very close to the rear of another vehicle, then the Collision Prevention Assist would have started beeping and the system would have automatically applied the brakes.*"
43. Mr Sestras was interviewed by the police the following day (when he had the assistance of an interpreter and legal representation). At the time of the interview Mr Sestras was not informed that his registration number had been provided to the police (by the anonymous caller). Mr Sestras accepted that "it was possible" he was on the A10, using his satnav to navigate. This was a road he was not very familiar with. He confirmed that he had driven from Santa Pod, where the weather had previously been grey and then drizzly. He stated: "*Yeah we had some music but listen not, we were talking and laughing and listen to music. Not for me, for my friends for anybody when I'm talking to my friends.*". He turned off the A10 at the junction with the A414.. At the conclusion of the interview Mr Sestras asked: "*No, it's just I do have a question though. I'd like to know how I ended up here in this position*". As stated, he had not been told of the anonymous caller information at that point.
44. In his oral evidence, Mr Sestras was very brief in his answers to questions. He has been described by counsel as taciturn, which I accept as a fair description. I take into consideration that giving evidence through the medium of an interpreter does not always encourage a free flow of evidence. It was notable however, that Mr Sestras largely answered questions with very few words,(mainly a simple yes or no), denied seeing the Peugeot at any point or being aware of the accident. He was asked about his wife's mobile phone and initially denied any recall that she had a silver iPhone, as they changed their phones regularly. I found this to be rather surprising, given that he knew that his wife's silver iPhone had been taken by the police at the point of his arrest.
45. Mr Sestras was questioned by Ms Rodway on behalf of the claimant as to his presentation upon arrest and when the police came to his home. It was suggested that he did not appear surprised, or alarmed. Mr Sestras said that he was both shocked and alarmed and did not know what was happening. He did not ask about the wellbeing of those young children involved in the accident. He explained that he was in shock. In so far as it is suggested that the reaction of Mr Sestras to the police attendance at his home and his arrest is in some way supportive of guilt on his part (i.e., he was not surprised by their attendance because he knew

he had been involved in the incident) I do not accept this. It is very difficult to give any weight at all to the reaction of a person upon arrest or to police attendance. It may be that many innocent people would react differently, expressing greater shock or asking more questions. Many would loudly proclaim their innocence (which Mr Sestras did not do at the time). However, people react very differently in shocking situations. I cannot safely make any adverse findings based on the presentation and demeanour of Mr Sestras as shown on the bodycam footage at the time of his arrest. The most that can be said is that he asked no questions, he made no assertions of his guilt or innocence, and he was compliant.

46. In cross examination Mr Sestras was unforthcoming with any further information (it being his case of course, that he knows nothing about this incident). He was specifically asked whether he accepted PC Duke's evidence that he had made "no comment" responses to specific questions in the second police interview. Mr Sestras, again a little oddly, said that he didn't understand or hear well what PC Duke had said. I say this was surprising because Mr Sestras was sitting in the courtroom, next to an interpreter who I noted was speaking to him at various points of the evidence. Further, PC Duke's evidence was clearly audible and no one else in the court raised any difficulty at all in hearing what was being said. When PC Duke's evidence as to the "no comments" was put to Mr Sestras, his answers became a little more animated and fulsome. He said that what PC Duke said, about no commenting to the question of how Bobby Leigh Graham had been able to accurately describe his wife, was not true. He denied saying "no comment" to the question as to whether he accept his car had been picked up on the ANPR. He said he answered all the questions save for one his solicitor said was not for him to answer.
47. Of course, a person under caution being interviewed by the police, has the right to remain silent and may choose to not answer question or say "no comment" to any particular question. I note that Mr Sestras' denies having given "no comment" answers to these specific questions, knowing as he now does that the recording of the interview has been mislaid and that it is his word against that of PC Duke. It would, I find, have been simple for Mr Sestras to have accepted that his car may be on the ANPR cameras (as he did when the hard evidence was produced). It would have been simple to say he could not explain why the description of the female passenger matched that of this wife or provide some other rationale that it was a common enough description. I find that Mr Sestras' evidence as to his "no comments" was unconvincing. He has chosen to deny what is said by PC Duke as to those responses. However, in his written statement, whilst referring to the second interview, he does not at any stage challenge what PC Duke said about his "no commenting". Nor did he seek to clarify that point at the outset of his evidence when he confirmed the truth of his statement. It was only in oral evidence that Mr Sestras denied that he had made certain "no comment" responses. That, in my judgment, was unconvincing. On balance I find that Mr Sestras did respond "no comment" to those specific point put to him by PC Duke, and he is now choosing to distance himself from that.
48. Mr Sestras confirmed, in cross examination, that his career was as an HGV driver and although he had some woodworking qualification, he had never worked in that field. He knew his Mercedes was a powerful car which accelerated quickly. He was aware that driving dangerously could affect his driving licence and his ability to work; *"I was thinking I might lose my licence and therefore my job"*.
49. He was asked about the clothing he and his wife were wearing on the day. This is because Bobby Leigh Graham's description was of the female passenger wearing a red and blue plaid lumberjack shirt whereas photos produced of Mrs Sestras on the day show her wearing a striped t-shirt (predominantly navy blue with white stripes and a single red stripe). Against the background that the day had been grey and the weather drizzly upon leaving Santa Pod, the assertion that neither he nor his wife had any other warmer clothing with them appears somewhat unusual.

50. Finally, Mr Sestras was asked if he had ever driven at more than 70mph on the A10. He denied ever driving over 70mph. In the context of his owning and driving a powerful car, which he volunteered could travel up to 155 mph and had a fast acceleration, this was a somewhat unconvincing response.
51. Mrs Sestras gave evidence in good spoken English without the need to rely upon an interpreter to any great extent. In her written evidence, which is very brief, she confirmed that she and her husband had been to Santa Pod that day and were travelling home. She was chatting with her friends who may have dozed off for various points on the journey (she had remained awake). There was nothing unusual about the journey. Her husband is, she says, a safe driver. She states, *"I don't remember him driving particularly close to a car nor do I remember him undertaking another vehicle"*. That phraseology is a little strange, presenting as a non-remembering rather than a denial that it had occurred. Mrs Sestras can be seen on the bodycam footage of her husband's arrest and is fully compliant with handing over her silver iPhone to the police when asked. She provided a statement to the police the following morning when her husband was still at the police station. In that statement she confirmed that the party had been at Santa Pod at a racing event, until it had ended and started to rain. She did not recall any incidents during the journey, save that it seemed to be a slow one and *"it felt like forever"*. She made no mention in that initial statement of whether she or other passengers had been awake or asleep during the journey.
52. In her second witness statement prepared for these proceedings, Mrs Sestras produced photographs of her, her husband and their friends on the day at Santa Pod. As set out above they show her wearing a striped t-shirt. Her husband is wearing a pink striped polo shirt. In respect of her silver iPhone, she confirmed that she does not upload photos or items to any online storage facility.
53. In her oral evidence it was put to Mrs Sestras that she was *"acting"* when she appeared on the bodycam footage, and she knew exactly what had happened that afternoon. For the reasons set out above, I find it difficult to place any real weight on how a person presents when the police come to their home in the early hours to carry out an arrest. Mrs Sestras said she did not know how to answer questions about the appearance of the female passenger in the vehicle, but that it wasn't her. She was aware that if her husband was held responsible for this incident, he was at risk of losing his licence. She confirmed that it was she who was the drag racing fan: *"I am the drag racing fan. I like big cars, its big acceleration, starting off at high speed. I am the one with the sports car."*
54. I heard and considered the evidence of the two rear seat passengers in Mr Sestras' car: Mr Adrian Catinca and Mrs Andreea Catinca (nee Zaharia). They are family friends of Mr and Mrs Sestras. Their evidence was very brief. They had not provided statements to the police as part of the investigation (according to PC Duke they could not be traced). Mr Catinca stated *"I was asleep for a large part of the journey. I am not aware of any accident happening on that journey either involving our vehicle or around our vehicle"* In oral evidence, I formed the strong impression that Mr Catinca did not really wish to be present in court. He had understood his written statement (in English) but not all of it, he said. It was therefore translated for him. How he came to sign a statement he did not fully understand, I do not know. His statement had been prepared two years post-accident and he did not remember the day well. Initially he didn't remember where they had been that day, then recalled it was Santa Pod (he said he did not understand the question which was plainly put). He confirmed Mr Sestras' car was a powerful one but denied that there was any showing off by Mr Sestras in his driving. He was very unclear as to what he had been wearing on the day of the event: a photograph was put to him which appeared to show a fleece jacket on his knee. He was shown this in a *"blown up"* form and said it looked like his leg. I do not accept that evidence. He asserted that he has slept on the return journey, initially saying it was most of the way, then changing that to half the

way and then falling asleep again. I am sorry to say that Mr Catinca was an unimpressive witness: the impression he created was that he wanted to say as little as possible.

55. Mrs Catinca gave her evidence in English. She confirmed in her witness statement that she was in the comfortable back seats of the Mercedes, and she was drowsy (she did not say she was asleep). She did not notice anything unusual about the journey, she said. In her oral evidence, that account changed. She said she thinks she must have fallen asleep but cannot say for how long. I found this change of evidence to be unsatisfactory.
56. The final lay witness I heard from was Ms Sellers, the 3rd defendant and mother of the claimant. It was clear that Ms Sellers was extremely nervous throughout the whole hearing and found it to be an understandably difficult experience reliving this very traumatic event. The following points I found to be of particular note from Ms Sellers written and oral evidence:
- Ms Sellers made a statement to the police in early September 2017. She recalled looking in the mirror and seeing a large black 15 plate Mercedes gaining on her.
 - It had a male driver and a female passenger. It appeared to be trying to push her out of the way. This caused her alarm.
 - Without warning the vehicle undertook her, swerving to the inside lane and then back in front of her. She noticed it had blacked out rear windows. She felt there was nothing she could do, and had to steer sharply to the left, then lost control of her car (which had been travelling at about 70mph)
 - Ms Sellers pointed out in her written evidence to the court that her recollection was not good as she had been trying not to remember what had happened. However, what she had said in her police statement had been true (save for correcting details as to the colour of her car and the length of her relationship with Mr Graham)
 - Her recall (contrary to what was said by the anonymous caller) was that she was not past the lorry at the time of the undertaking, that she was not travelling at 80mph, and she did not accelerate after the incident.
 - She stated : *“My reactions were made in the very short time after I saw the Mercedes cut in front of me very close to my car. I acted instinctively trying to avoid the Mercedes which looked as if it might hit my car. If the Mercedes had not pulled in front of me as it did then the accident would not have happened.”*
 - In her oral evidence Ms Sellers reiterated these points: her thinking was, in that split second, to get past the lorry, to steer her car to the left to avoid colliding with the Mercedes.
 - She gave clear evidence that she had some time to see the Mercedes behind her, she was bothered by his driving ; *“It was scary”*
57. Ms Sellers, despite her clear nervousness gave evidence in an impressively clear and credible manner. Her split-second decision as to what to do in the agony of the moment when the dark car (identified by her as the black 15 plate Mercedes with blacked out rear windows) pulled into her path was persuasive and logical, in my judgment.
58. That concluded the lay evidence I heard. In addition, however, I need to consider the evidence of the anonymous caller. I have listened with care to the recording of that telephone call, made less than 4 hours after the incident in question. The caller provides a good deal of detail as follows:
- The Mercedes drove at speed (90 mph) up the outside lane of the A10.
 - It swerved in front of a small hatchback (it might have been a Nova; he was not sure).
 - He identifies that there was big articulated lorry in the inside lane.
 - The Mercedes came behind the lorry then pulled in front of the hatchback.
 - The hatchback accelerated, swerved and lost control *“rolled and rolled and rolled”*.
 - There is some confusion as to whether the Mercedes went past the caller on the inside or the outside (he appears to say both).
 - The caller followed the Mercedes which shot off.
 - He said that it was a black Mercedes with blacked out windows.

- He was unable to say who was in the Mercedes, whether it was a male or female driver.
 - The caller, who was driving a powerful car himself, caught up with the Mercedes, and followed him “all the way to Harlow”, catching him on the roundabout and taking down his registration number. He followed him for 4 or 5 miles.
 - The Mercedes was “black, jet black “ (Mr Vincent suggested that the caller said it was dirty; I am unable to distinguish those words)
 - The caller made it clear that he did not want to be further involved, he had been shaken up and had a drink, but his wife had driven him to the phone box, and he had given the police the information that he had.
 - It is accepted by all that the registration number given by this caller was the registration of Mr Sestras’ black Mercedes
59. It is accepted by all parties that this evidence is admissible but there is a dispute as to what weight I should give it. It is right to say that the anonymous caller has not provided a witness statement, has not been able to be cross-examined and had not verified the truth of what he says. It is also correct to say that certain aspects of his account do not match squarely with other parts of the evidence (particularly, the lane he was in, where the lorry was, the action of Ms Sellers when the Mercedes swerved in). Other parts do significantly match and tie in with other evidence in the case. Of course, the crucial additional piece of the jigsaw that this evidence provides is the registration number.
60. I have considered this evidence in the context of the evidence as a whole and further the guidance as to the weight to be given to it as set out in s4 of the Civil Evidence Act 1995.
- a. “S4
- 1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence”

In my judgment this evidence appears to be from a caller giving the information in a genuine attempt to help investigation of the accident. It was suggested by Mr Vincent on behalf of the 1st Defendant that this caller could in fact be the guilty driver of the dark vehicle who is in some way attempting to detract attention from himself by providing false details to the police. With the greatest of respect to counsel, I find such a proposition to lack any merit. For it to be true the caller must have found another vehicle similar to his (black 15 plate Mercedes with blacked out windows as identified by Mr Graham and Bobby Leigh Graham, with an upstanding Mercedes badge), on the road within minutes in the same or near location, which he quickly decided to blame, took down his registration number and then concocted a false narrative in his police call. The anonymous witness would, presumably have to have had a female passenger with a silver iPhone meeting the description provided by Bobby Leigh Graham. I reject such an assertion entirely as, with respect, incredible. It is alternatively suggested by Mr Vincent that the anonymous caller simply followed the wrong car: that in the seconds post-accident, having seen it as he described, he somehow got confused and followed the wrong vehicle. Whilst I accept that there were certain inconsistencies as set out above in the anonymous witness’ account, I find that an inference can properly be drawn that his account is overall reliable. He stated that he accelerated, in his own powerful car, to follow that black Mercedes. There is no suggestion in his account of any other similar vehicle being involved or in the vicinity. I do not accept that there is any evidence of malice or mistake from which I could reasonably draw an inference as to unreliability of the evidence (save only that he was unwilling to be involved in a police investigation)

61. In further consideration of s4 of the Civil Evidence Act:

“(2) Regard may be had, in particular, to the following—

- a. whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness.
There was obviously no opportunity for parties to call the anonymous witness.
- b. whether the original statement was made contemporaneously with the occurrence or existence of the matters stated.
This statement was made on the evening of the incident in less than 4 hours.
- c. whether the evidence involves multiple hearsay.
It does not
- d. whether any person involved had any motive to conceal or misrepresent matters.
As set out above I reject the proposition that the caller, the ‘person involved’ was the driver of the black Mercedes.
- e. whether the original statement was an edited account or was made in collaboration with another or for a particular purpose.
There is nothing to suggest that either is the case
- f. whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight”.
The evidence adduced was from a fully and accurately recorded telephone call, carefully managed by a police employee.
62. I remind myself of the guidance given by Dyson LJ in *Welsh* and consider that this is evidence to which it is proper to give weight. I recognise that it has not been tested in vigorous cross examination, but nevertheless this evidence (recognising it has some shortcoming) has the ring of truth about it. It does not stand alone. It is considered as part of the evidential picture overall, which I will consider further in this judgment.
63. I do note the following point as to the anonymous caller evidence
- As set out above, the account given by the caller was a detailed one
 - The description of the accident is entirely consistent with a driver having been a witness to the accident, as he asserts. There is no other credible explanation for the degree of detail he offers
 - Rejecting as I do the suggestion that the caller was the guilty driver, his motive in calling appears genuine – to help in providing information without wishing to be involved. I do not accept the description of the caller by Mr Vincent as being motivated by wanting to be some sort of hero. That does not fit with the evidence.
 - I accept that there appear to be some inconsistencies as to speed and positioning of vehicles.
 - I accept that the evidence suggests that this caller must have been some distance behind the Peugeot. He was able to comment on the actions of another motorist ahead of him .. “don’t know who he was I don’t even know what the vehicle was, but I remember him slamming the brakes on, obviously the man who’s going to run down the ditch and try and find these people” . That would position him a little distance back.
 - His description of what happened to the Peugeot post- accident is vivid and reflects the other evidence in the case; “rolling, rolling rolling.”
 - Further his description of how he followed the black Mercedes is detailed and contains details of the route into Harlow which Mr Sestras would take to reach his home.
64. All of those factors together lead me to conclude that the hearsay evidence of the anonymous caller, identifying as he does the registration number of Mr Sestras’ black Mercedes with blacked out rear windows, is one to which I can properly attach weight
- The Expert evidence
65. There are 3 accident reconstructions experts in this case: Mr Sorton instructed by the Claimant, Mr Rusted for the first and 2nd Defendant, and Mr Kingham for the 4th Defendant.

They have each produced their own reports and then a single joint statement which I have fully considered. I heard the oral evidence of Mr Sorton and Mr Rusted. As no one had any questions to ask of Mr Kingham, whilst he was in court and willing to give evidence, his oral evidence was not required. In reality, there is little assistance that the expert evidence can provide to me, although I am of course grateful for their assistance. I remind myself that the purpose of accident reconstruction evidence. In the case of *Liddell v Middleton* an authority well known to these courts and often referred to, Stuart-Smith LJ gave some useful guidance as to the proper approach for a court to take in respect of such evidence.

“In some cases, expert evidence is both necessary and desirable in road traffic cases to assist the judge in reaching his or her primary findings of fact. Examples of such cases include those where there are no witnesses capable of describing what happened, and deductions may have to be made from such circumstantial evidence there may be at the scene, or where deductions are to be drawn from the position of vehicles after the accident, marks on the road, or damage to the vehicles, as to the speed of a vehicle, or the relative positions of the parties in the moments leading up to the impact.

In such cases the function of the expert is to furnish the judge with the necessary scientific criteria and assistance based upon his special skill and experience not possessed by ordinary laymen to enable the judge to interpret the factual evidence of the marks on the road, the damage or whatever it may be. What he is not entitled to do is to say in effect 'I have considered the statements and/or evidence of the eyewitnesses in this case and I conclude from their evidence that the defendant was going at a certain speed, or that he could have seen the plaintiff at a certain point'. These are facts for the trial judge to find based on the evidence that he accepts and such inferences as he draws from the primary facts found. Still less is the expert entitled to say that in his opinion the defendant should have sounded his horn, seen the plaintiff before he did or taken avoiding action and that in taking some action or failing to take some other action, a party was guilty of negligence. These are matters for the court, on which the experts' opinion is wholly irrelevant and therefore inadmissible.”

I accept that this is the correct approach to take and is one which I adopt in respect of the expert evidence in this matter. The experts, in their evidence as a whole all took care not to overstep their role. Fundamentally, where there is necessary scientific criteria and assistance beyond the skills of the ordinary lay man, I am entitled to utilise the expert evidence to assist me and to determine the factual evidence. However, in terms of findings that can be based on factual evidence alone, that is ultimately a matter for me to determine.

66. It is helpful therefore to note what is agreed by the experts, in so far as they can assist the court. I refer to their joint statement contained in the bundle at p586 onwards. The experts agree that there is very limited physical evidence upon which they can based any expert opinion.

“19 We agree that any reconstruction or analysis in this case based on physical evidence is limited to consideration of the tyre marks generated by the Peugeot and the damage it sustained.

20. All the remaining analysis is based upon a review of the witness evidence, the accuracy of which must be for the Court”

67. In terms of the speed of the 3rd Defendant’s Peugeot the tyre marks may indicate that it braked (Mr Rusted) and those marks show the probable course of the Peugeot across the road. Mr Sorton “calculated a range of speed of between 69 and 71 miles per hour for the Peugeot”. There is some dispute between the experts as to whether this is a correct method of calculation, but no other alternative is provided

68. In terms of a key issue of identifying the dark vehicle, the experts comment on the lay evidence. Mr Rusted had stated that the visibility of Mr Leigh Graham, looking at the car behind from the passenger side wing mirror, would be limited. However, in cross examination, he accepted that the oral evidence of Mr Leigh Graham was that he had looked behind him through the rear window, where the view would be “much clearer, absolutely”.
69. A comparison of the body shape and markings of different makes of executive saloon cars was set out in the expert report. Not all Mercedes cars have an emblem standing proud on the bonnet. However, these emblems or mascot badges can be purchased and after fitted (I have no evidence as to whether Mr Sestras did that or not). Mr Rusted had included in his evidence photographs of the front of a number of executive style vehicles. He accepted, that from the rear and from a distance of say 100 metres, it would be difficult to distinguish between a Mercedes and a BMW. Both have similar profiles and a central badge.
70. In terms of the assistance of otherwise of the ANPR evidence (and I accept that this was not initially available when the experts reported) the expert agree that :
- “one possible ANPR site would be the roundabout between Fifth Avenue and the A1169 Elizabeth Way at Harlow .Mr RUSTED determined that the distance travelled from the incident location to this camera is approximately 6.2 miles .In the document MG3, it is confirmed that the camera identified by Mr RUSTED is the relevant camera, the footage from which was interrogated by the Police.MG3 includes an image showing Mr SESTRAS’ vehicle passing the camera at 18:57:22 on the day of the incident. We agree that the relevant image corresponds with the position of the camera referred to by Mr RUSTED....We agree that the time it would take a motor car to travel from the incident locus to the position of the ANPR camera would depend upon a number of features including: i. The speed of the vehicle. ii.Traffic flow”*
71. The experts of course accept that a faster travelling vehicle would cover the distance in shorter time and a slower one, slower. The experts considered the timing of the original 999 call was at 5 minutes before Mr Sestras’ car passed the ANPR camera: as such this may be consistent with the 1st defendant’s car being in the location of the accident scene at around the time of the collision. It does not however, mean that there were no other similar profile dark cars there which had not been picked up on the ANPR: there are a number of junctions where other vehicles could leave that road such that they would not be picked up by the ANPR.
72. The experts also comment on the driver assistance package which was fitted to Mr Sestras’ car. Within the reamended defence it had been specifically pleaded on behalf of the 1st and 2nd Defendant that: “Collision Avoidance Assist would have prevented the Mercedes from getting too close to the rear of the Peugeot.” In fact, the experts all disagree with that assertion. The driver assistance could have been manually switched off. Even if it were in operation, “The system will not prevent the lead vehicle being followed at close quarters (i.e., tailgating).” The system might give a visible or make an audible warning. However, if the Mercedes then accelerated (by changing lanes or otherwise) the system would be overridden. As such, if the Mercedes had been tailgating as the witnesses describe, the system would not have prevented this. If the Mercedes had then changed into the inside lane behind the lorry again as the witnesses describe, but accelerated, this would have overridden the system. The presence of the Collision Avoidance Assist system therefore does not provide any real assistance in determining the issues in this case. It certainly does not exclude the 1st Defendant as the driver and the assertion in the pleadings that it would, is erroneous on the basis of the agreed expert evidence.
73. In oral evidence, little was added to the expert evidence as a whole. Mr Sorton accepted there were a number of places that the dark car involved in this accident could have come off the road and not been picked up by an ANPR camera. He stood by his position that the Peugeot was probably travelling at about 70mph (based on the tyre marks), would have

decelerated as it crossed lanes and he doubted if it would have been travelling lower than mid-50s mph when it left the carriageway. From leaving its lane to leaving the carriageway would take about 2 seconds (at the speed and with the distances involved). He accepted that if a vehicle were well ahead of the collision or well behind, they may not see it. Variations of 30 seconds could put a vehicle 1km away.

74. Mr Rusted's oral examination was very brief, making it clear that factual determinations were the province of the court .

Overall analysis of the evidence and findings

75. As set out above, I found the witnesses in the Peugeot, namely Adrian Graham , Bobby Leigh Graham and Danielle Sellers to be honest and truthful witnesses doing their best to assist the court. It is inevitable in describing a fast-moving event that witnesses overall have slightly different perspectives and recollections. Further, this event was a very traumatic incident, not only for the occupants of the car but for others such as Ms Hope who came upon the scene to assist. Whilst there may be modest inconsistencies, I take a step back any look at the evidence overall.
76. I find that the dark car drove in a dangerous manner. There can be no real dispute as to that. All witnesses identify it as carrying out a sudden undertaking manoeuvre, and then cutting in ahead of Ms Sellers' Peugeot. I also accept the evidence of Mr Graham, Mr Leigh Graham, Ms Sellers, the anonymous caller, and Mr Bevan that the dark vehicle was dangerously close behind the Peugeot and was tailgating it.
77. There can be no dispute that it was the driving of the dark car which caused the collision. On the evidence set out above, there is no serious contention that Ms Sellers could have done anything to have avoided this accident, Mr Vincent in his submissions conceded the same. His argument as to her blameworthiness assumed (from the anonymous caller) that she "saw red" and accelerated post-accident. This simply does not tie in with any of the surrounding evidence. It may be that an observer from some distance back saw Ms Sellers' car making sudden movements, reacting to what had just happened, and assumed that this was an acceleration and an angry reaction to it. However, I find that Ms Sellers reacted instinctively and properly in the agony of the moment to a powerful car undercutting her and pulling immediately in front. She was not to blame for this accident.
78. The essential question is: was that dark car the Mercedes driven by Mr Sestras on that day? Has the Claimant established, on the balance of probabilities that Mr Sestras was the driver?
79. I find that the dark car responsible for this accident was the Mercedes driven by Mr Sestras and, when he and his witnesses say it was not him, they are not being honest. I reach that conclusion by piecing together the timeline and assessing the evidence overall
80. It is accepted that on a back calculation from the ANPR cameras, it was possible for Mr Sestras car to be in that location at the material time. Of course, much would depend on his speed. However, it is accepted that he did drive along that road, in that vicinity at about that time .
81. Within a very short time of the accident the police had information that the dark vehicle was a 15 plate Mercedes. That is confirmed from the Storm record and Mr Adrian Graham's evidence. The account to police officers in the Storm log can only have come from Mr Graham and Bobby Leigh Graham who were spoken to at the scene. Their evidence was highly persuasive. As direct witnesses to the accident they had a good and largely unhindered viewpoint of the Mercedes.
82. Bobby Leigh Graham described very specific details. The tinted windows, the colour and style of the car, the mascot, the little rear rim, all matched the 1st Defendant's car which was also a 15 plate Mercedes.
83. Bobby Leigh Graham had a good view of the passenger. His description of her and her actions was again clear and detailed. She was a white woman, with shoulder length brown hair, holding a silver iPhone. Mrs Sestras, who was sitting in the passenger seat, is a white

woman, with shoulder length straight brown hair and it is known she had a silver iPhone at the time. I do not find the evidence as to the plaid lumberjack shirt to in any way undermine this evidence. It is correct that in photographs taken earlier in the day, Mrs Sestras was wearing a different colour t-shirt. That does not exclude her wearing a plaid shirt later, particularly when it is accepted the weather at Santa Pod had taken a turn for the worse and rain or drizzle had set in. The friends of the Sestras are I find, shown in the photo with a puffer jacket and in all probability a fleece. Mrs Sestras says that she chose to go out for the day without any warmer garment than a t-shirt. I do not accept her evidence on this point. Even if I am wrong on this point, I do not consider that the plaid shirt point significantly undermines the overall evidence of Bobby Leigh Graham. His evidence on video just after the accident was impressive in terms of its clarity. That clarity was mirrored in his oral evidence before the court. Even if he were mistaken about the plaid shirt, the other parts of his evidence are strikingly credible.

84. I have no doubt that the dark vehicle which caused the accident was a black Mercedes 15 plate, with tinted black windows, a small rear spoiler and an upstanding bonnet mascot. That car had a male driver and a female passenger as described by Bobby Leigh Graham.
85. I have weighed into account the other evidence, of perhaps a dark blue or black BMW. This evidence came in the hearsay evidence of Mr Bevan. I find that Mr Bevan must have been some distance back and as such, his view would be less reliable than those in the Peugeot. In any event it is accepted by the expert evidence (and I find as a fact) that the appearance of a BMW and Mercedes from a distance from the rear could easily be mistaken. I find that Mr Bevan's hearsay evidence was mistaken as to the make of the car, because of their similarities when seen from a distance.
86. I have also considered the evidence in the Storm report that an off-duty officer reported the dark car as a BMW. I can place little if any weight on that entry. I simply do not know where it has come from. It is untested, it is vague, and I do not place any reliance upon it.
87. Having concluded that the car was a black Mercedes as described by the occupants of the Claimant's car, has the Claimant proved, on balance that this was the same black Mercedes as driven by Mr Sestras or is the 1st defendant the unhappy victim of a series of unlucky coincidences, which would put his and another strikingly similar Mercedes with a passenger whose description is consistent with that of this wife in the same area at about the same time?
88. I weigh up all the evidence in the round and turn to the evidence of the anonymous caller. For the reasons set out above, I consider that evidence, although hearsay, as highly persuasive. I have listened with care to the transcript of the call. I have considered whether this could be an elaborate ploy by the caller to detract attention from himself. I reject that as implausible. The detail of that account, when tied in with the other evidence as a whole, leads me to conclude that the account by the anonymous caller of following the car, from the accident scene and noting down its registration, is evidence upon which I can place weight. The proposition that he may simply be mistaken and got the wrong car does not tie in with his evidence of immediately giving chase. In addition, although this is a relatively modest point in support, the vehicle he followed went in the direction of the 1st Defendant's home. The vehicle he followed must, on balance have been that of Mr Sestras.
89. Against all of that evidence I have weighed in the balance the evidence of Mr and Mrs Sestras and their witnesses. They simply deny that anything happened. There are internal inconsistencies between those witnesses. In his police interview the day after the accident, when presumably these things were fresh in his mind, Mr Sestras said that this wife and the witnesses were talking, laughing and listening to music. Mrs Catinca's witness statement had her awake but drowsy. It is only as the case developed that Mr and Mrs Catinca were asleep, thereby explaining that they could not have seen anything. In my judgment this has the clear

marker of witnesses who are seeking to distance themselves from the case : I did not find their evidence reliable.

90. Mrs Sestras' evidence contained no blatant inconsistencies, save that I found her explanation as to not wearing a shirt or jacket improbable. Although I make no findings as to this, she accepted that she was a fan of fast cars. This would be consistent with her filming on her iPhone fast driving by her husband. She was clearly aware of the potential consequences to her husband if he were to lose his driving licence.
91. Mr Sestras' evidence was problematic. I find that he chose to make no comments in his second interview when matters were put to him that he found difficult i.e., his car appearing on the ANPR footage and the appearance of the female passenger being consistent with that of his wife. I accept PC Duke's evidence in respect of this (and Mr Sestras did not challenge the "no comment" issue in his witness statements). As such, the overall impression I have is that Mr Sestras' bare denial breaks down when faced with compelling contradictory evidence. He knew on the night in question and the next day when interviewed, that if he were to be found guilty of an offence of dangerous driving he would risk losing not only his licence but his livelihood. As such, when he did not know that anyone had identified his vehicle, he denied his involvement. He has chosen to continue in his denial. Further, he alleged that his car could not have driven in the manner described, because of its collision assist system. He allowed his case to be amended to plead this point. That point has no merit, as agreed by the experts. His denial that he ever exceeded the speed limit did not assist. On balance I find that the evidence of Mr Sestras was unconvincing and unpersuasive.
92. I have balanced all of the evidence. The evidence presented on behalf of the claimant (and 3rd defendant) when taken as a whole presented a compelling and persuasive picture. The evidence presented by the 1st defendant and his witnesses did not.
93. I find that, in fact, the 1st defendant, Mr Sestras, was the driver of the black Mercedes which caused this accident. The driving and its aftermath were such that he must have known of its consequences and yet he drove away. Mr Sestras is not the unfortunate victim of a series of unhappy coincidences. He was the driver whose dangerous driving caused this accident and the serious injuries to the claimant.

Conclusion

94. In answer to the questions to be determined in this matter I find as follows:
 - a) Has the Mercedes driven by the first defendant been correctly identified as involved in the accident? Yes. I am satisfied, on a combination of the evidence overall, that the black Mercedes 15 plate involved in this accident was driven by the 1st Defendant.
 - b) If 'yes' to a., was the accident caused by the negligent driving of the first defendant: D1? Yes: the driving was dangerous. The 1st Defendant tailgated the Claimant's vehicle, undertook it at speed and cut in front of it in a reckless manner when he knew or ought to have known that this would cause the 3rd defendant to take emergency action.
 - c) Was the accident caused by the negligent driving of D3? No. Ms Sellers was not to blame for this accident. She reacted reasonably logically to the emergency situation and took steps to try to control her car. In the agony of the moment, those steps were not successful. However, she was not negligent.

In all the circumstances I find in favour of the Claimant in this matter against the first defendant, who is being indemnified by the 2nd Defendant. The claim (and counter claim) against the 3rd and 4th defendants are dismissed.

HHJ Howells
Sitting as a judge of the High Court

22nd May 2023