

General Form of Judgment or Order

In the	Cardiff County Court
Claim Number	BS614159
Date	30 May 2013



MAURICE JOHN KIRK	1 st Claimant Ref
SOUTH WALES CONSTABULARY	1 st Defendant Ref APO.MS.SWP001-138

Before His Honour Judge Seys Llewellyn Q.c. sitting at Cardiff County Court, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

Upon hearing the Claimant in person, hearing Counsel for the Defendant

IT IS ORDERED THAT

Please see attached Ruling

Dated 28 May 2013

28 May 2013 Further ruling on second list of witnesses whom Mr Kirk wishes to call.



On 29 April 2013, at a time when the Defendant were shortly to call their last witness, Mr Kirk delivered a written list of 44 witnesses whom he wished to call. On 1st May 2013 I delivered a written ruling identifying which witnesses he was to be permitted to call. I did so pursuant to the responsibility upon the court to control the evidence by giving directions, and actively to case manage the case, under CPR 32.1 and CPR 1.4. In that written ruling it I set out the nature of the present proceedings; the Orders which have been made previously, setting out in particular the dates by which witness statements, or witness summaries, had been required to be served; the background from 2008 to date in respect of preparation of the present trial insofar as it permitted or impeded Mr Kirk's ability to prepare evidence and secure witness statements or summaries; and the principles by which the court is governed in respect of the calling of witnesses. I adopt that in full for the purpose of the present ruling and I do not repeat it here.

Since then, Mr Kirk has given evidence over several days and has called 13 witnesses. By a Position Statement dated 22nd May 2013 Mr Kirk served a further written list of some 19 named witnesses he would wish to call. I stated on 24 May that I would again give ruling in writing. This is (i) for clarity as to my reasons and (ii) for ease of access to a record of the ruling. I understand that a hearing is listed for Friday 7 June 2013 to consider permission to appeal (and/or appeal itself) against my ruling of 1 May 2013. I will in this ruling list the witnesses individually in this ruling, as I did in the last, by number and name in Mr Kirk's list but preceded by a letter "B", to avoid confusion, assuming that the present ruling may also be the subject of application for permission to appeal.

B1. Ex-Inspector Coliandris. This is a former police officer. In these proceedings the Defendant gave an undertaking to call or tender any witness in respect of whom a witness statement had been lodged, so long as that was a presently serving officer and thus within the control of the Defendant; but expressly did not give that undertaking in respect of any witness who was no longer a serving police officer. I was told that Mr Coliandris was reluctant to attend court because of his state of health. I am aware that he wrote to the court himself seeking to inform the court confidentially of his state of health and his reservations, but stating that he did not want these details to be made known to Mr Kirk. I declined to read his representations so long as he wished the content of his communications to be kept from one of the parties and I so informed them. In the event Mr Coliandris was not called and the Defendant did not seek to tender his evidence, whether live or under the Civil Evidence Act.

Mr Kirk does not articulate the nature of the evidence which he believes Mr Coliandris could give. On the face of his witness statement Mr Coliandris is not a direct witness to any fact or incident in issue. He appears to have looked into complaint by Mr Kirk, without identifying relevant material evidence. If so, then this appears to be a witness whom Mr Kirk wishes to call blind, in the hope of either fishing for evidence in support of his case or simply cross-examining the witness in support of the same exercise. I have also sought to be alert to the possibility that a witness might be able to assist, as to the matters in issue, if he is referred to in documents before the court; but I have identified no such reference.

Accordingly I rule against permission to call this witness.

B2. Ex Chief Inspector Trigg. This is in fact a renewed application – in respect of witness 15 in the ruling of 1 May 2013. No new material is advanced. The same considerations apply. Accordingly I still rule against permission to call Mr Trigg.

B3. Mr Brian Genner. This is a witness who has given evidence in relation to the events of 6 June 1995. Mr Anthony Gafael and his girlfriend Alison Genner the daughter of this witness were excluded that day from their flat, an incident which led to prosecution of Mr Kirk, and in respect of which Mr Kirk complains that police officers forced entry through a roller shutter door to Mr Kirk's premises. There are discrepancies between the account in the witness statement for these proceedings of Sergeant Roe (as he was in 1995) and others, including Mr Genner, as to when Roe was present or what he did. In the case of Mr Roe, Mr Kirk produced after Mr Roe's evidence a statement of the time from Sergeant Roe which appeared clearly inconsistent with what Mr Roe had told me. I therefore permitted Mr Roe, exceptionally, to be recalled for further cross-examination. The inconsistencies have been explored in cross-examination by Mr Kirk and in questions from myself.

Mr Kirk seeks that Mr Genner be recalled also. However the evidence of Mr Genner has been given. The evidence of Anthony Gafael has now been given. If there is material in the evidence of Mr Genner (or Mr Gafael) on which Mr Kirk seeks to rely, or inconsistencies in the evidence between witnesses on which he seeks to rely, that is available in closing submissions and will be for me to consider as in any other case. Unlike Mr Roe, there is no earlier inconsistent written statement of Mr Genner relied upon (which in any event, if it had been available, ought to have been put to him), nor other proper reason for him to be recalled.

B4. Mr Roe. He has been recalled once (see above). It would be wholly exceptional for a witness to be recalled for a second time. I have now heard evidence from Mr Gafael. However Mr Kirk identifies nothing new which would justify, and I have failed to identify anything in the evidence of Mr Gafael which would justify, recalling Mr Roe.

B5. Ex Chief Inspector Colin Jones. Mr Kirk states that he is a "key player". A chief reason for Mr Kirk's interest is that at one of Mr Kirk's appeals in the Crown Court a police officer attended as an observer, when he was seen to be nodding towards a police officer PC Rewbridge during the giving of her evidence. According to Mr Kirk, when asked to explain himself, the police officer said he was attending on instruction from Chief Inspector Colin Jones. Inferentially, Mr Kirk believes that Mr Colin Jones is, or may be, one of the senior police officers whom he passionately believes to have conspired to hound him.

As with a number of police officers whom Mr Kirk wished to call in his list of 29 April 2013, (i) there is no statement from the proposed witness (ii) it is wholly unlikely that the witness will give a statement, and (iii) there is no direct evidence of connection of the witness with the specific matters in issue in these proceedings. I consider that the real wish of Mr Kirk is to cross-examine the witness in the hope that something might turn up; but that there is no discernible prospect that such an exercise would assist the court.

B6. Inspector Andrew Rice. Mr Kirk has submitted on a great number of occasions that Mr Rice should be recalled. Evidence has been given by a Mr Alexander-Ebbs that he attended Aust Service Station to give a witness statement, in respect of an assault he alleged against Mr Kirk, at a meeting attended by a number of persons including Mr Rice, where he was encouraged to “sex up” his account. However Mr Alexander-Ebbs was present in person at this court on 21st February 2013 during the continued evidence of Mr Rice; gave a witness statement on that day making the allegations against Mr Rice; and these allegations were put to Mr Rice. Otherwise, Mr Kirk asserts that Mr Rice must have been aware of covert surveillance of Mr Kirk; and/or he now wonders whether it was Mr Rice whom he sought to “arrest” outside the magistrates’ court (rather than a Sergeant Hill) when handing over a file which Mr Kirk thought might contain important real evidence. In my respectful judgment there is, (and there continues to be), no justification for the recall of Mr Rice.

B7. Inspector Steve Parry. This is in fact a renewed application – in respect of witness 43 in the ruling of 1 May 2013. No new material is advanced. The same considerations apply. Accordingly I still rule against permission to call Mr Parry.

B8. Jonathan Clayton. I made ruling in respect of Mr Clayton on 1 May 2013. No witness statement or witness summary has been served in respect of him. He is said to be relevant to the incident of 4 July 1999, but it is not said that he was a direct witness to any of the events of that day. If anything, there is less reason now for him to be called, in that Mr Kirk’s witness Susan Jenkins has given evidence of what is required of those flying from one airport and air traffic control zone to another; and Mr Aishe has given evidence of the closeness of the police helicopter to Mr Kirk’s aircraft. I discern no sufficient or good reason for him to be called.

B9. Ex Chief Constable Barbara Wilding. This is another renewed application – in respect of witness 2 in the ruling of 1 May 2013. Mr Kirk identifies nothing new. The same considerations apply now as did then. Accordingly I still rule against permission to call this witness.

B10. Ex Special Constable Frank O’Brien. The position statement itself articulates no cause for him to be called. Orally, Mr Kirk said he was an important witness because he gave evidence which “caused the case [against Mr Kirk] to collapse”. I did not find it easy to follow what this evidence was supposed to be. It seemed to be that an HORT1 form was said by the police officers to have been served upon Mr Kirk, yet no document was ever traced, nor an audit trail provided for such a document, hence the case against Mr Kirk failed. However, to the extent that this is right, Mr Kirk may in any event rely upon it.

This is an incident of May 1995. in which Mr Kirk shows particular interest, in that Special Constable Deren Martin says that she served him with an HORT1 form; and has given evidence that she made enquiries with the police in Guernsey (in pursuit of whether Mr Kirk’s vehicle was or was not exempt from vehicle excise licence), being told that there was a warrant for his arrest outstanding. This fuels Mr Kirk’s suspicion and belief that he was the subject of harassment by police in Wales because of his past travails with Guernsey police.

Nonetheless, it seems to me that Mr O'Brian is a paradigm case of a proposed witness from whom there is no witness statement or summary, no reason to suppose that the witness (if he can be found) will give a statement, no indication whether he would remember whether another officer served an HORT1 firm on Mr Kirk on a day 18 years ago, SC Deren Martin being the officer in the case, and one whom Mr Kirk hopes to cross-examine despite him being called as his own witness, in the hope that something might turn up. Accordingly I decline to give permission for this witness to be called.

B11. Ex SC Ridley. Mr Kirk tells me, (if I have succeeded in following him correctly), that Mr Ridley was the investigating officer for the same incident as resulted in police photographs being taken of his vehicle (as was done for SC Deren Martin for the May 1995 incident). Similar considerations apply as with SC O'Brien. So far as I can see, this is fishing in the dark. In default of witness statement, or the beginnings of a witness summary, I cannot justify permission to call the witness.

B12. Mrs Diana Graham. Mr Kirk asks for a "foreign witness summons". This witness lives in France. The Claimant's Witness Bundle includes at page 91-123 a statement, not in proper form, by this witness with associated documents. The bulk of the statement relates to the proceedings which followed the Vale of Glamorgan Show incident of August 1998, (Action 3, "2"). This is one of the claims struck out by my rulings of November 2010. Accordingly that which relates to it is not now material.

Much of the rest relates to how Mr Kirk was dealt with on occasions in court, by magistrates (and occasionally by judges, including judges in the Divisional Court), some of it clearly recording what Mr Kirk said to her and some although much less clearly being personal observation on the part of Mrs Graham. I informed the parties that I would read this statement and discard all that related to the Vale of Glamorgan Show. I do not envisage that Mrs Graham could assist me significantly further by giving evidence orally and, as I have made clear on a number of occasions, it is not permissible to call a witness in the hope that she might add something further which is not contained either in a witness statement or witness summary. Not least, if there were anything material for Mrs Graham to add, the time has long passed when such material was required to be lodged with the court. I will treat the statement as admitted in evidence, but I will make no further order.

B13. Mr Gafael. He has now been called, since I directed steps for bailiff service of Notice to show Cause which secured his attendance on 24 May 2013.

B14. G. Thomas. Without agreeing the content of the statement, the Defendant is content that the statement be read. The same applies to a Mr Kirke (as to maintenance of tyres on vehicles of Mr Kirk), whom Mr Kirk raised orally on 23 May 2013 as a potential witness.

B15. Nigel Thomas. This is in fact a renewed application – in respect of witness 30 in the ruling of 1 May 2013. No statement has been produced. No new material is advanced and the same considerations apply as before. I rule against deferment of conclusion of the evidence in order for him to be searched for and thus against permission to call Mr Thomas.

B17. Mrs Kirstie Kirk. In the event she has been called.

B18. Mrs G Jones. This appears not to be pursued by Mr Kirk.

B19. Mrs J Hanson. Mr Kirk told me that he had 'lost her statement'. In fact there is a letter from her at page 168 (Claimant's Witness Bundle) which raises complaint about disturbance from his wayward tenants. Mr Kirk and Barry police officer witnesses whom I have heard agree the problems with alcoholism, and bad behaviour on the part of his tenants, in particular a Mr Paul Stringer and a Mr Burns. Oral evidence from Mrs Hanson, not found or available to date, is not reasonably necessary for me to deal justly with the matters in issue.

With the exception of one witness, there is no other witness whom Mr Kirk wishes to call. That exception is B16, a Michael Murphy. The Defendant made clear a considerable time ago that that it objected to reception of the evidence without the opportunity to cross-examine the witness. No witness summons was served in respect of this witness. Mr Kirk told me on Friday 24 May that he had expected the witness to be present voluntarily that day. However there was, and has been since, no communication to the court from the witness.

It is understandable that the Defendant should object to his short statement being admitted without the opportunity to cross-examine him. The statement is one compiled by Mr Kirk in September 2010, with an added signature of the witness, and in manuscript the words "content below relating to me is true to the best of belief(sic)". It describes him as a scrap dealer previously reported for stealing a veterinary practice car back in 1996 (presumably Mr Kirk's veterinary practice); and the police are said to have told the witness on the one hand "I want you to take it back immediately to Penarth police station, where I will later inform Kirk it has been traced" and on the other hand one of the police is said to have jumped into the scrap dealer's cab and himself to have driven it to Penarth: the two clearly conflict. On the other hand the statement reads that the police told him "We hate Kirk's guts" and that the policeman said he would "have the greatest of pleasure in booking Kirk when he comes to collect it and drives it away without tax, MOT or insurance".

The failure to appear without explanation, to support the statement such as I have described it, is not a prepossessing basis to ask for the court to appoint another day of hearing. If all, or even some, of Mr Kirk's complaints of police harassment and bad faith are upheld, on the other evidence I have heard over some 49 days, the evidence of the scrap dealer suspected of stealing the practice car in 1996 will be peripheral; if few, or none are upheld it will be improbable that the evidence of Mr Murphy would tilt the balance on any of them. The court has gone to what I consider to be extreme lengths, in order to accommodate genuine difficulties to Mr Kirk in preparing his case, and those which are of his own making; and has granted great latitude to him in calling witnesses despite failure to serve statements in the form and by the dates stipulated. Applying the overriding objective of dealing with cases justly and proportionately, I do not consider it reasonably necessary that the court should appoint another day for hearing of evidence in the case of this witness.

28 May 2013.

His Honour Judge Seys Llewellyn, QC