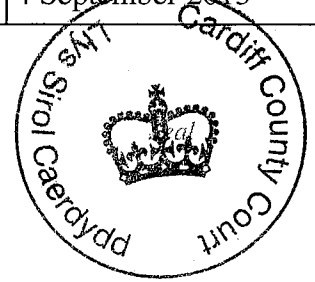


# General Form of Judgment or Order

In the	
Cardiff	
County Court	
Claim Number	BS614159
Date	4 September 2013



MAURICE JOHN KIRK	1 <sup>st</sup> Claimant Ref
SOUTH WALES CONSTABULARY	1 <sup>st</sup> 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.

## IT IS ORDERED THAT

1. The conclusion of the present trial, and judgment in it, stands presently frozen by the fact that Mr Kirk is again in custody. It is necessary to record the immediate history and to give directions.
2. At the conclusion of evidence in this trial I directed that the parties lodge sequentially with the court written submissions, namely by the Defendant first, by 24 June 2013, and the Claimant Mr Kirk in reply (initially on 9 July, later extended to 16 July 2013), to be followed by oral submissions on a date to be listed, in the event 23 July 2013 namely seven days after the date for submission of Mr Kirk's written submissions in reply. The direction which I made, for sequential submissions, reflected the fact that on certain issues the burden of proof lay on the Defendant (eg once proved that he was detained by the police, it lay on the Defendant to show that he was lawfully detained); and reflected my view that Mr Kirk's written submissions could be better focussed if he was able to see the closing written submission of the Defendant. I was conscious that the scale of the task was considerable for each party, and in particular Mr Kirk as a litigant in person, and hence allowed a substantial period to each to prepare their written submissions.
3. The Defendant lodged their written submissions on the due date. Mr Kirk likewise lodged his written submissions on the due date as extended (subject to minor formatting amendments lodged on 18 July 2013). It was evident from the written submissions of Mr Kirk, which were far from being as methodical or comprehensive as one might hope if he had been legally represented, that it was wise to have allowed a date for the hearing of oral submissions.
4. On 23 July 2013 the parties appeared before me. Mr Kirk informed me that he was without his papers or the files in the case since he had been excluded by his (in effect) landlord Mr Mark Davenport from the flat at 175 Cowbridge Road West, Cardiff where he Mr Kirk was living. He also informed me that he had been arrested by the police and released, I believe on two separate occasions. I understood from him that on at least one occasion he had been arrested in connection with or as a result of allegations made by Mr Davenport against him which I understood Mr Kirk to deny.

The court office at Cardiff County Court, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET is open between 10:00 am and 2:00 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 02920 376400 Fax: 029 20376475

Produced by: Mts R Pahl

5. (For the record, for some months the court had been aware of 175 Cowbridge Road West as Mr Kirk's stated place of residence and on 23 July 2013 Mr Kirk showed to me in open court an envelope addressed to him at that address, unopened, which appeared to be a typed communication from the local authority whether of demand for council tax or the like).

6. Accordingly I directed that both parties should file and serve any further written points in closing by 4pm on 13 August 2013.

7. Since then it transpires that Mr Kirk has been remanded in custody. The enquiries made on my behalf by my assistant Mrs Rosie Pahl, suggest that this results from the same or further allegations in connection with the dispute between Mr Kirk and Mr Davenport. I presently confine myself to the effects of his incarceration on , and what steps may be available to mitigate those effects in, the present civil proceedings: (i) the criminal proceedings are independent of the jurisdiction which I am currently exercising (ii) I have no access to or - at present - locus standi in respect of the evidence which may be adduced by the prosecution or the Defence in the criminal proceedings.

8. On 23 July 2013 I further informed Mr Kirk that if he sought any order to permit him to re-enter the flat at 175 Cowbridge Road West, to retrieve his papers and files and/or to permit him to reside there, he must file with the court an application for such an order with a witness statement supported by a statement of truth setting out the history and circumstances of any agreement that he be entitled or permitted to live there, and of his exclusion.

9. I also informed Mr Kirk that I would be willing to consider such an application urgently, if made.

10. Mr Kirk informed me in court on 23 July that there was no need for me to do so, since 'he had a Magistrates Court order that he be re-admitted'; and/or had instructed other lawyers. It was unclear why there should be such an order from the criminal court, or why if there was it remained un-acted upon since he told me that the date of this Order was 13 July 2012 .

11. (In the event, enquiry by this court of the Cardiff Magistrates Court established that Mr Kirk had been granted bail with a condition not to contact directly or indirectly Mark Davenport or a Nathan Kingsley, providing that the must not enter The Pitstop, Cowbridge Road West, "save the communal area of The Flat 175 Cowbridge Road West". This may or may not have reflected an understanding on the part of the Magistrates Court that Mr Kirk was, or said he was, resident at the flat at that address but did not itself amount to an order that Mr Kirk be permitted to re-enter the flat).

12. In the days succeeding, Mr Kirk indicated by e-mail to this court that he did wish to avail himself of the civil court's jurisdiction to make injunctive order in respect of access to the flat at 175 Cowbridge Road West. In short, by e-mail he sought to issue application. I asked that he be reminded of what I had directed earlier:

[ "In order to deal with this, I need what I invited Mr Kirk on Tuesday to submit, namely an application in the proper form (plus the relevant court fee or stating an undertaking to pay the proper fee to the court at the first opportunity)

and

a witness statement by Mr Kirk in support, verified by a statement of truth ("I believe that the contents of this statement are true"), succinctly (i) identifying the premises (ii) stating that he has been resident at the premises [since abs] by agreement [oral/written on or about him , ] with [ name ] and that on [xyz ] the locks were changed without the consent of Mr Kirk and that he has since been excluded from the premises against his will [ ? by names ] and requires access (a) to retrieve his papers and belongings and ?(b) with intent to resume residence [if ordered by the court to be permitted], or not? If also (b), stating what alternative accommodation he does or does not have. If this is done initially by e-mail it may be sufficient, if enough information is included. This is not for the sake of formality. If any Order is made, the court will give a return date for the matter to be considered further (whether to continue discharge or vary the terms of any order) ; and thus in any event, the application and supporting witness evidence will have to be served on the proposed Respondent / Defendant, so that he has the opportunity to consider what witness evidence was out before the court and respond (if he wishes) to it."

13. Mr Kirk did submit a short form of written statement verified by a statement of truth, but one which did not set out the factual matters which were necessary to consider making an order for injunctive relief.

14. This court then became aware that Mr Kirk had been arrested and remanded in custody in HMP Cardiff. This court received a courteous e-mail from Ms Jeune, Mr Kirk's sister, informing it of the fact of his remand, and

relating Mr Kirk's anxiety and apologies that he was unable to comply with the directions that final submissions be lodged.

15. I wrote to the Governor of HMP Prison relating the civil proceedings and stating that ,

"The civil court is aware that Mr Kirk faces criminal proceedings and is currently in custody. What is not clear is how long he will be held in custody and on what date he will be in Court. However irrespective of that, it is essential to know whether facilities can, and will, be made available for Mr Kirk to work while in custody upon the preparation of his final submissions.; and for him to work on a laptop. I appreciate that for reasons of security laptop communication with others outside the prison may be restricted or denied.

I would be grateful for express confirmation that this will be the case, since it has obvious consequence on bringing to a conclusion of the civil Trial and the very lengthy preparation of my Judgment."

16. The Assistant Governor replied to my assistant Mrs Pahl that Mr Kirk had been remanded in custody on 13 August 2013, but

"He states he requires approximately 200 lever arch files from his flat to properly prepare his final submissions. As discussed I am unable to access these files, however if they could be retrieved and delivered to the Prison then we could organise his access to them.

His Laptop is stored at the Prison in "stored property" because it is against prison rules for prisoners to retain such items in possession. We have agreed with Mr Kirk that we will supervise access to his Laptop to copy the relevant files onto Disc which he can then access on a prison computer (which has no Internet access ability), in the Education department. This will enable him to work on his final submission for His Honour Judge Seys Llewellyn".

17. Accordingly I directed that the deadline of 13 August 2013 for submission of any final submissions be suspended (in respect of both parties) until further order.

18. The obstacles to achieving access to his files in prison are in part practical. I do not know whether there is a person whom Mr Kirk is willing to trust and authorise to collect his files and deliver them to HMP Prison, Cardiff. He must indicate whether there is. I trust that facilities will be made available to him to do so consistent with Prison Rules for those on remand, by telephone or letter, or e-mail via the prison authorities. If he does, I will institute enquiry by this court of the owner of the premises at 175 Cowbridge Road, whether access will be permitted without court order to an authorised person to collect papers and files at a pre-arranged time and date; and if permission is refused I will consider what exceptional course may be required in the circumstances for this case.

19. In addition the court has received brief written communications from Mr Kirk while in custody, some of which are difficult to follow (at least so far as the civil court is concerned).

20. For completeness, I record that one earlier letter/communication of 24 July 2013 might conceivably be intended , (although the matter is unclear), as an application not only against Mark Davenport in respect of access by Mr Kirk to his papers but for harassment against South Wales Police in respect of the like matters. His factual complaint to the court has been of being barred from access to his papers by Mr Davenport. If there is to be a fresh application against the Defendant in the present civil proceedings, it needs to be one clearly formulated and supported by a witness statement. No such application is before me and I therefore make no order in respect of it.

21. Another is a sheet of paper dated 14 August 2013, received at the Cardiff Civil Justice Centre Cardiff on 19 August 2013, saying that Mr Kirk wishes to order a transcript of the present case, and to be supplied with a list of exhibits. This will be passed to the appropriate member of staff, who will refer it to transcribers. However the transcribers will inevitably ask for assurance of payment, and the extent and expense of the task would be enormous (namely to transcribe a hearing of evidence taken on 49 days).

22. If Mr Kirk requests the whole transcript in any event, that is a matter for him and him alone. If he is making the request out of a desire to make final submissions within a defined period, it seems to me a request at enormous prospective expense which he should not feel constrained to make. In either event, the absence of access to the transcript on request, made now, will not if he is granted bail or has access to his files and papers be a sufficient reason for delay in making final submissions and this matter proceeding to preparation of a final judgment. The absence of access to his files and papers is a different matter. Provisionally my view is that since I directed that he have the opportunity to make final submission following the hearing of 23 July 2013, I ought at least for the

immediate future to adhere to it fully. Matters may become clearer as to what whether and how current criminal proceedings will be pursued.

His Honour Judge A. Seys Llewellyn Q.C. sitting at Cardiff Civil Justice Centre on 27 August 2013.

Dated 27 August 2013

**1) Alleged offence(s).** Give brief details of the charges against the defendant.

Witness Intimidation on 31/7/2013

**2) Magistrates' court bail decision.** Give brief details of the magistrates' court decision you want the Crown Court to change (including the date of that decision), and the reasons which that court gave.

On 31/7/2013 Cardiff Magistrates' Court withheld bail.

**3) Reasons for this application.** Explain, as appropriate:

(a) why the Crown Court should not withhold bail,

(b) why the Crown Court should vary the conditions of bail,

(c) what further information or legal argument, if any, has become available since the magistrates' court bail decision was made.

Mr. Kirk (The Applicant) is the lawful tenant of 175, Cowbridge Road, Ely. The landlady is the Applicant's natural daughter Belinda Kirk. It is alleged that the alleged victim of a common assault and now the act of witness intimidation is one Mark Davenport.

It has been confirmed to the author of this application by Belinda Kirk that Mr. Davenport is in illegal occupation of 175 Cowbridge Road and possession proceedings have been initiated.

The Applicant remonstrated with Mr. Davenport, inter alia, about Mr. Davenport's unauthorised changing of the locks at the aforesaid address so as to enable Mr. Davenport to squat.

The Crown say that Mr. Kirk poked Mr. Davenport to the chest with his finger.

The Crown further state that on the 31<sup>st</sup> July, having been granted bail not to contact Mr. Davenport, the Applicant made a gesture namely drawing his finger across his own throat so as to intimidate Mr. Davenport, a potential witness in the common assault proceedings.

The accusation is denied and the Applicant avers the complaints are malicious and self-serving to Mr. Davenport's unlawful end namely: the continued illicit use and abuse of 175, Cowbridge Road.

The remand in custody is disproportionate given the relatively minor nature of the assault and the Applicant's honest belief his own actions were lawful.

Belinda Kirk was also present when the alleged intimidation took place and has instructed the Applicant's sister no such gesture took place.

The Crown's fears of Witness Intimidation Commit Further Offences and Fail to Surrender could be addressed by The Applicant being allowed either to re-occupy 175, Cowbridge Road, Ely Cardiff once Mr. Davenport has been lawfully evicted (the same is anticipated by Belinda Kirk to be about to take place within 24 hours) or Belinda Kirk's flat at 124, Cheltenham Road Bristol.