

R.C.V.S.

A THE LEGAL ASSESSOR: That is fairly offensive, Mr Kirk, and you know it is, and you are saying it purposely. I have risen to the bait. The fly is there and I have taken it. I think perhaps it was not very respectable and I am sure, on reflection, you will agree.

MR KIRK: I respectfully agree.

B THE CHAIRMAN: Do you have any further questions, Mr Kirk?

MR KIRK: No.

THE CHAIRMAN: The Committee has no questions. Thank you very much.

(The witness withdrew)

C MISS FOSTER: The matter I next wish to deal with is found under folder 10, and the evidence of conviction is found in magistrates' court documents at pages A10/1, 2, 3, 4 and 5. I will call PC Osborne.

MR KIRK: While there is a delay, I have been told I have some defence witnesses here. Am I entitled to get access to them between one and two?

D THE LEGAL ASSESSOR: They are your witnesses.

MR KIRK: They are police officers.

THE LEGAL ASSESSOR: But they are your witnesses.

E ROBERT OSBORNE, Sworn

Examined by MISS FOSTER

Q Officer, you see before you a grey bundle with tab numbers down the side. Would you turn to tab 10, and page A10/6.

A I have it.

F Q That should be a document headed "Royal College of Veterinary Surgeons", indicating that it is a statement with your name at the top, is that right?

A That is correct.

G Q Would you glance through that, please. I note there is a signature at the top and the bottom of page A10/6, and at the bottom of pages 10/7 and 10/8. Is that your signature?

A That is correct.

Q The date is 18 October 2001. Did you sign a statement in this form on that date?

A I did.

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A Q Can you see anything, at this stage, that you would like to change in that statement?
A On page A10/8, it is just one question. At paragraph 17.2 it says "drove a motor vehicle on a road whilst not wearing an adult belt". I am not aware of that actual charge. It should be just a safety belt that should be fitted to the vehicle. I do not know if that is an omission, but I left it in when I originally signed the statement in case that was something that was required.

B Q Would you like to change the wording there in any way?
A No, I am quite happy with everything I have said there.

MISS FOSTER: Sir, I propose to read this through, unless there is an objection, and it to stand as the evidence-in-chief of the officer. (To the witness): Constable, if it turns out that after I have read it, there is anything you want to change, will you feel free to do so.

C A Yes.

Q This is the statement of PC1215 Robert Osborne.

"At 11.00 hours on Wednesday, 5 April 2000, I was on uniform duty on mobile patrol, driving a marked police vehicle at Park Place, Cardiff. PC 3689 Gareth Price was with me as a front seat observer.

D We were travelling northwards in the outside lane when I saw a blue Peugeot 306 (index number D793 TAU) being driven by a male who I subsequently discovered to be Maurice Kirk. I noticed that Mr Kirk was using a mobile phone to his left ear and that he was also not wearing a seat belt. I slowed down and indicated to Mr Kirk to pull over to his nearside. Mr Kirk, however, smiled at me and drove on.

E I turned the police vehicle round and followed the Peugeot. The Peugeot turned left into Stuttgarter Strasse. I followed it and activated the blue flashing lights on the police vehicle in order to cause Mr Kirk to stop.

F However, Mr Kirk did not stop. Stuttgarter Strasse in due course becomes Dumfries Place. I followed Mr Kirk down Dumfries Place. Dumfries Place in due course becomes Newport Road and Mr Kirk continued down Newport Road, with me following behind, until the junction with West Grove. There are traffic lights at that junction. The lights were at red and Mr Kirk was forced to stop.

G Mr Kirk was in the middle lane of the three lane carriageway when he stopped at the lights. PC Price got out of the police vehicle, walked to Mr Kirk's front passenger door and knocked on the window. I saw Mr Kirk look at PC Price and then look away. I then saw PC Price go to the driver's window and knock on it. I saw Mr Kirk look at PC Price and then lock his door.

H D3/48

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The traffic lights then turned to green and Mr Kirk drove off. PC Price returned to the police vehicle. We then followed Mr Kirk's vehicle in the police vehicle down Newport Road.

B

I then used my personal radio to inform other units. I flashed the headlights on the police vehicle in order to continue to indicate to Mr Kirk that I wished him to stop. However, Mr Kirk continued down Newport Road.

C

Further down Newport Road, there is a junction with Albany Road and there are automatic traffic signals at that junction. As Mr Kirk approached those traffic lights, they were showing red. There was a vehicle in front of Mr Kirk which stopped at the lights. I then saw another police vehicle stop in front of that vehicle to prevent it moving forward and thereby to assist in blocking Mr Kirk in. I brought the police vehicle I was driving to a halt immediately behind Mr Kirk's vehicle.

D

PC Price and I then got out of the Police vehicle and went up to Mr Kirk's car. PC Price went to the front passenger side and asked Mr Kirk to get out of the vehicle. Mr Kirk ignored PC Price who then tried to open the passenger door. However, Mr Kirk had locked it. I was at this stage standing by the driver's door. I asked Mr Kirk to open the door but Mr Kirk ignored me. I repeated the request a second time. Mr Kirk, however, continued to ignore me. I then drew my PR 24 police issue baton and with the use of the baton, smashed the rear passenger off-side window. Having done so, I was able to open the driver's door, after unlocking it.

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As I opened the driver's door, the Peugeot began to move forward. I switched off the ignition, took hold of Mr Kirk and removed him from his vehicle.

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I got Mr Kirk to stand by the side of his vehicle and put his hands on its roof where I could see them in order to check that he did not have on his person anything that might harm him or anyone else. I saw that he had in his pockets some syringes and needles and ampoules of what appeared to be drugs. I then took him round to the back of the police vehicle.

G

I could not understand why Mr Kirk had been behaving as he had, in particular refusing our repeated requests for him to stop. I felt it appropriate to ask Mr Kirk to provide a roadside breath specimen and said to Mr Kirk: 'I require you to supply me with a specimen of breath for a breath test procedure. Will you supply me with a specimen of breath?' Mr Kirk made no reply.

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With PC Price's assistance, we conveyed Mr Kirk into the rear of the police vehicle. I then asked Mr Kirk a second time to provide a specimen of breath

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for a roadside breath test procedure but, again, he made no reply. I then arrested and cautioned Mr Kirk for failing to provide a specimen of breath. Mr Kirk made no reply.

PC Price and I then made a search of Mr Kirk's personal belongings. We found numerous syringes, ampoules of drugs, a large quantity of Bank of England notes and one shotgun cartridge.

B

Mr Kirk was then taken to Roath Police Station and placed before the custody staff. However, there were no facilities available to carry out a full breathalyser procedure at Roath Police Station that day. Accordingly, Mr Kirk was conveyed to Rumney Police Station where there were such facilities. He was again placed before the custody staff. Mr Kirk gave two specimens of breath at 12.03 and 12.04 respectively. Both specimens produced zero readings.

C

Mr Kirk was charged by me at 1315 hours.

On 11 April 2000, Mr Kirk appeared at Cardiff Magistrates' Court. My understanding was that he pleaded guilty to the following offences:

D

1. Having been required to provide a specimen of breath for a breath test failed, without reasonable excuse, to do so.

2. Drove a motor vehicle on a road whilst not wearing an adult belt.

E

3. Used a motor vehicle when there was not in force in relation to that use such a policy of insurance or such a security in respect of third party risks as complied with the relevant requirements of the Road Traffic Act 1988.

4. Used on a road a motor vehicle as respects which no test certificate had been issued within the appropriate period.

F

In view of Mr Kirk's plea, I was not required to attend the magistrates' court.

I was, however, subsequently given notice to appear at the crown court in respect of the case. I do not, however, know the reason for that particular appearance. In any event, I was subsequently de-warned.

G

I subsequently received notice to appear at Cardiff Crown Court for Mr Kirk's appeal against sentence in this matter. However, my attendance was not in fact required. I do not know the outcome of Mr Kirk's appeal."

Is there anything that you want to change or add to, officer?

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A A No, not at all. It is fine.

MISS FOSTER: That is all I wish to ask the officer.

Cross-examined by MR KIRK

B Q Have you ever been asked to provide a copy of your notebook of this incident, or a copy of the statement after the event, once charges had been decided to be proceeded upon?

A The Crown Prosecution Service may have asked for my pocketbook or notes at the time, and would have ---

Q Do you have it with you?

A Yes.

C Q Excellent, and we can get a photocopy of what is recorded in the notebook over the lunch hour to save time. Do you have a copy of the statement you made?

D A I do not have a pocket notebook with me. At that time, in the Cardiff subdivision, we used what is called an incident book, so for each incident I attend or get involved in, I fill out an incident booklet. This is the actual one I used at the time. What this assists us in doing in dealing with an incident is that if there is what we call a hand-on, if I have to leave duty at a specific time, a following officer can then carry on because all the notes are made. What we also do is make our statements in this incident booklet. We then go to a machine which is set automatically... I do not know the workings of it, but there is generally one in each police station, in the custody suite. Having made those notes, it is then automatically timed and dated as original notes made at the time, so if, as in this instance, it went after 14.00 hours, and somebody else was required to charge in relation to this offence, I would have gone off duty and somebody else would have taken it on, done the charges, and filled out his point where he would then have timed and dated it. I have no pocketbook with me in relation to this. I have a pocketbook entry to say that an incident booklet was actually made, and I have brought this along for the court.

E Q Does your notebook contain facts relating to this offence?

A In relation to the statement that is written... what has just been read to me, that is a copy, more or less, of what has gone on.

F Q Does your notebook contain any facts relating to these matters?

A The notebook tells you exactly what the statement does - it is one and the same.

Q You are saying that what is here in the report is duplicated into your notebook which is not here today.

G A I have no pocketbook entry in relation to this incident except to say, sir, that an incident booklet was written out.

Q Therefore, in answer to the first question, your notebook contains no facts relating to this matter other than the facts of this matter are fully... are not in the notebook. They are in that document that is before the court.

H

A

A That is correct.

Q You made a statement as well on A4. Do you have that with you?

A Yes, it is in note form downstairs. I was just told to produce this.

MR KIRK: Over the lunch break could I have, as soon as possible, photocopies of both before I proceed with my cross-examination? I can talk about other things but I really ---

B

THE LEGAL ASSESSOR: You cross-examination, and I will hear Miss Foster on that.

MR KIRK: Can I have a ruling that I am going to be entitled ---

THE LEGAL ASSESSOR: When you have finished your cross-examination.

C

MR KIRK: No, cross-examination depends on whether I get those documents or not. There has been a judge who has ordered them to be released in Newport court in June of last year.

THE LEGAL ASSESSOR: And you have not seen them. Do you have a copy of the order?

MR KIRK: Yes. It is a letter from the court.

D

THE LEGAL ASSESSOR: Do you have a letter from the court?

MR KIRK: Yes. I will need lunchtime to find it.

THE LEGAL ASSESSOR: Can you go on with something else?

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MISS FOSTER: Sir, in order to shorten this, we have no objection to him having photocopies of the relevant offence in the notebooks he has named.

THE LEGAL ASSESSOR: You can have them over the adjournment.

MR KIRK: Is it not unfortunate that the CPS refused for over a year now? (To the witness): Mr Osborne, this statement is quite different to the facts that were put before the court of magistrates.

F

THE LEGAL ASSESSOR: In what way? You must put ----

MR KIRK: I am going to rely on those notes.

THE LEGAL ASSESSOR: He has it in his pocketbook if you want to see it.

G

MR KIRK: I am sorry, could I have a look at that?

THE LEGAL ASSESSOR: (To the witness): Is that statement in the book the same as the typed statement?

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A A No, sir, When I go to court, I will use my notes made at the time as my original notes. I may, whilst making the statement, have to... The statement is actually bulked out, but I would say things in my notes myself ---

Q But this statement is bulked out.

A That is right. I would say in my notes "Caution applied", whereas in my statement I might say, "I cautioned him with the outline offence." There are certain things in procedure ---

B

Q This has been slightly extended to the notes you made at the time.

A That is right. This statement was taken on my behalf by one of the gentlemen from the College, and he wanted it set out in this way and that is it. My statements to the court dealing with the same facts would read slightly differently.

C

THE CHAIRMAN: Would that also be true of the statement that you have downstairs?

A Yes, that is the original statement I made for the court from my notes but, as I went to court, the Crown Prosecution Service would have that statement, but I would be reading from my notes.

Q The facts are the same.

A The facts are the same, but it is just laid out ---

D

THE LEGAL ASSESSOR: Presentation.

A That is correct, sir, the presentation is slightly different.

MR KIRK: Mr Osborne, what is written in this notebook bears little relationship to what was said in court, and in particular, even more, bears little relationship to your statement which was signed and created on 18 October, a very long time after the original ---

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A Can I read it?

THE LEGAL ASSESSOR: In what way?

MR KIRK: The court was told that it was a high speed chase with blue lights flashing. (To the witness): Blue lights were flashing, were they not?

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A As far as the court case was concerned, I was not required to attend at a magistrates' court. I understood that a plea had been issued at that time. In relation to my statement, the blue lights were originally put on. When I realised it was not a pursuit, no lights were put on. In fact I actually say we were following and not pursuing. It is a different point. I do not know what was said in the court, and I am just looking at my notes now.

Q That is a very short note, is it not?

G

A Yes, but they are the notes I would have used at the time, sir.

Q The court said it was a high speed chase and there were blue lights flashing because you wanted to stop me, did you not?

A Headlights flashing.

H

A

Q You had blue lights.

A The headlights were flashed to indicate to the driver of the vehicle that I wished him to stop. That was after my colleague had gone to the vehicle, knocked on the window and indicated to the driver, Mr Kirk, to pull over. It was not a high speed chase; it was a follow.

Q But that is what the court was told.

B

THE LEGAL ASSESSOR: You cannot answer.

A No, sir, I was not there.

MR KIRK: The court was told that you were out to stop me and that the blue lights were flashing.

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THE CHAIRMAN: The witness has said that since he was not in court, he cannot comment on that.

MR KIRK: I put it to you that that is part of your record that we demanded by recorded delivery the minute I was... within twenty-four hours of my leaving the police cells.

D

A Over a period of time, since I have got involved in this arrest, I have received certain documentation from Mr Kirk, personally, to the police station with my name on it. As soon as I know who it is from, I immediately redirect it to the Crown Prosecution Service. There are certain things, procedurally, which I am not at liberty to give. There are certain documents – be it videos or whatever... If myself or my colleagues started handing out either videos, exhibits or statements to solicitors not for the Crown Prosecution Service, it would be slightly higgledy-piggledy. The Crown Prosecution Service has to know what is required. I then wait for them to request it from myself, and then I can comply with their requests. All these requests go into what we call a day book. As it comes from them, it goes to the sergeant. The sergeant notarises it. It then comes to me for execution. I then deal with it as expeditiously as possible, and it goes from me but only to the Crown Prosecution Service.

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THE CHAIRMAN: That procedure is standard procedure which you would use in any circumstances similar to this.

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A Anything requested for me to do, especially for a court case, goes through the day book.

THE CHAIRMAN: What point are you making?

G

MR KIRK: (To the witness): When I had a zero zero reading on that definitive test, I said to you, "If you keep me here for one more minute, I will sue you." Is that not roughly what I said?

A I have a recollection of a conversation where you made certain threats against me, yes.

H

A Q If you detained me in custody for one more minute now that I had two zero zero definitive tests.

A Ys, you probably did say that. I cannot remember the exact words.

Q Why is it not on the statement that we have not seen yet?

THE LEGAL ASSESSOR: Is this on the statement?

B A No. People making threats at me is ---

MR KIRK: Routine.

A It is not routine sir, not at the police station., but I accept as a matter of course that people are upset with me. If I actually wrote down every single thing that I was told ---

THE LEGAL ASSESSOR: Do not excuse yourself, officer; just tell us what happened.

C A We may have had a conversation in relation to him being released, but I cannot remember the exact words.

MR KIRK: But you remember me threatening you that I would sue you if you detained me any further.

A Quite possibly, yes, sir.

D Q Your reply was, "I believe that you are under the influence of drugs."

A It could well have been, yes.

Q I put it to you that you made it quite clear and slammed me in the "clink".

A I do not think you actually went in the cell.

Q I went in the cell and you said, "If you refuse to see a doctor, we will keep you for court until tomorrow."

E A No, that is not my decision.

Q I put it to you that is what you said.

A No, sir, that is not my decision to make. I would have taken you before the custody staff. I have no further dealings with you then until I am told by the custody sergeant whether I should proceed to charges or not.

F Q But it is you, and you alone, who said, immediately after I said I would sue you, "I am not releasing you, I believe you are under the influence of drugs." You said it - no one else.

A No, I am not aware of that.

G Q You deny it. A doctor was called for what purpose?

A The custody sergeant would have, having heard the evidence I placed before him - the facts I put before him - made a decision if it is not drink, then a doctor would be called in relation to a possible impairment test.

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A THE LEGAL ASSESSOR: Was a doctor called?

A Yes, sir.

MR KIRK: What evidence for this court that caused you to consider that I was under the influence of drugs?

B A The same evidence – having failed to stop for me on two separate occasions with reasonable requests, locking your door and forcing me to cause damage to your vehicle. I then found ampoules of what I believed to be drugs and syringes in your possession. I believed that if you were not drunk, then you may be under the influence of something else. That is the evidence I produced to the custody staff, and I presume that is what the custody staff moved forward on.

Q When you were present with the doctor and I said to him, “Before you deposit your digits ---“

C A I was not present when the doctor was there. That was beyond my remit. I would not have been there with you and the doctor. That would be the custody staff.

Q He was asked, before he proceeded with an examination to produce his credentials – proof of his identity.

A I am unaware ---

D THE LEGAL ASSESSOR: Were you there?

A I was not there.

MR KIRK: But you left within thirty seconds of speaking to me because, for reasons best known to him, he choose not to produce his identification – qualifications.

A That would be on the custody record, but I was not there.

E Q And I was immediately released, was I not?

A No, sir,

Q At two minutes past two.

A You would have been charged with an offence prior to release.

Q Why did you not ask me to produce an HORTI?

F THE LEGAL ASSESSOR: Help the Committee with what that is.

MR KIRK: The normal traffic ticket when the police stop you for an alleged moving traffic offence. They are obliged... they can deal with it how they like, but because I was charged with no insurance, no driving licence, no MOT and something else, a lot of this could have been expedited by issuing a ticket to produce the documents within seven days.

G THE LEGAL ASSESSOR: The usual form to produce to provide a certificate of insurance or MOT at the local police station.

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A MR KIRK: Yes. (To the witness): Why did you not do that?
A From my recollection, you did not want to speak to me in any shape or form. Because you were then charged with a certain offence for which you were then put before the court within a seven day period, if you then had those documents, you would have produced them to the court, and no further action would have been taken in relation to those matters. It is not for me... There is nothing in law to say that I must give a producer.

B Q You are saying that because I was due to appear in court within seven days, that is why you did not issue the HORT1?

A Quite possibly yes, sir. From my recollection, that would have been right.

Q Do you know that I asked for videos to be produced, and the video of my custody with you was deliberately obliterated so that the police officers could not be identified?

C THE LEGAL ASSESSOR: Do you know that a video was taken?

A In relation to what, sir?

Q I do not know. It is yes or no.

A At the police station – Roath Police Station – there are video systems set up ---

Q Do you know whether this witness ---

D A There was no video produced at either Roath or Rumney Police Station, no.

THE LEGAL ASSESSOR: Again, we are drifting a little bit, Mr Kirk. I think the anxiety of the Committee was expressed to you. Stick to the relevant matters.

MR KIRK: (To the witness): Are you aware that I spent the whole morning before the highest ranking judge in Wales at the time, I was told – Mr Justice Evans QC – concerning the disclosure, concerning the Cowbridge show case, which is number 9 on this list, and that you chose to be outside the court area and follow me?

E A No, sir, I was not aware of this.

Q And that I pleaded not guilty to the using of a mobile phone and the prosecution dumped it – disposed of that?

A No, I am not aware of that, sir.

F MR KIRK: I do wish to show a video to this witness.

THE LEGAL ASSESSOR: Later on, when you come to your evidence.

G MR KIRK: No, this is a video that I wish to put to him. He has just told you certain information which I now wish to put to him by way of my successful ---

THE LEGAL ASSESSOR: Put it to him.

MR KIRK: As I understand it, you are refusing me the right to use videos.

H

A THE LEGAL ASSESSOR: Put it to the witness. Put to the witness what you say the video will show.

MR KIRK: (To the witness): I put it to you that the first video will show that you ... When the car stopped at the lights... Sorry, when there was a road block, another car was called to block us in – a police car.

B A A police van.

Q Yes.

“I then saw another police vehicle stop in front of that vehicle to prevent it moving forward and thereby to assist in blocking Mr Kirk in.”

C It was said in court, and it may be in your other notebook, that I attempted to drive away. The barrister quoted from your statement in court, that once I got to the lights, and you were behind with your blue lights flashing, you attempted to get out of the car, and I tried to drive off.

A That is correct.

Q That is what?

D A I presume you are correct, because I have made it in this statement here as well.

Q Tried to drive off.

A But I was not in court at the time it was said.

Q I am talking about at the scene where I was arrested.

A Yes, sir. What is the question, sorry?

E Q I tried to drive away as you were getting out of the police vehicle yourself.

A That is right, your vehicle moved forward.

Q I tried to get away.

A When I was standing at the window, yes, sir. Whether you tried to get away... the vehicle moved forward.

F Q You told the court in your notes at the time, read out by the barrister, that I tried to get away.

A I have no recollection of that. As I said, your vehicle moved forward.

G Q And that from coming to the side of my vehicle, it took you eleven seconds to smash your way in, drag me out, and put me, “Starsky and Hutch” style, straight across the roof of the car – my arms across the roof of the car.

A I do not know, sir,

Q Were you aware that you were being videoed at the time?

H

A A Yes, sir.

Q You were aware?

A Of course.

Q Why were those videos not made available to the defence when the standard recorded delivery letter came to your police station the following day?

B THE LEGAL ASSESSOR: No, Mr Kirk, that is something else. That is not relevant to the present issues. This is your other worry.

MR KIRK: (To the witness): Have you, at any time since the convictions, been asked to get custody records for the CPS?

A No, sir, that would not come to me.

C Q Who would it go to?

A That would go to, I think, the file preparation unit which is stationed at a different station, or straight to the custody handling team.

THE LEGAL ASSESSOR: Nothing to do with you.

A Nothing to do with me, no.

D THE LEGAL ASSESSOR: That is all we need to know.

MR KIRK: I cannot really proceed without the statement he has downstairs which is a fuller account than ---

THE LEGAL ASSESSOR: Very well.

E THE CHAIRMAN: If you have arrived at that point, Mr Kirk, since it is one o'clock, maybe it would be an appropriate time to take a lunch adjournment. Miss Foster, do you need slightly extra time to get help with ---

MISS FOSTER: I am very conscious that it is better for all parties that the matter proceeds as swiftly as it can, consistently with doing justice but, yes, that probably would be helpful.

F THE CHAIRMAN: We will say 2.15, and we will get Mr Kirk copies of what he is asking for.

MISS FOSTER: Yes.

G THE LEGAL ASSESSOR: Officer, you are still giving evidence on oath.

THE WITNESS: I understand.

(The Committee adjourned for lunch)

H

A THE LEGAL ASSESSOR: Miss Foster, is the statement being copied?

MISS FOSTER: The notebooks have been copied for Mr Kirk, and I think they are being handed now. (same handed)

THE CHAIRMAN: Mr Kirk, are you ready?

B MR KIRK: I have lost a file, but I will carry on.

THE CHAIRMAN: You now have in your possession a witness statement that you asked for prior to the adjournment.

C MR KIRK: No, I have not. I am waiting to have the statement that had been created for court by this officer. I only have a photocopy of the little book that was shown earlier today.

THE CHAIRMAN: Can you assist us here, Miss Foster?

D MISS FOSTER: I think the position is this, and the officer himself will be able to tell you whether this is correct: he did not have the statement that he thought he had with him – he had another one. That other statement, which is all he has, has been copied, but the notebook extracts which are relevant, as I understand it, have been copied.

THE CHAIRMAN: (To the witness): Is that correct, officer?

A That is correct, yes. I have brought my colleague's statement who was with me at the time and, as I believe as per normal for court, I have brought my original notes, and not a copy of my statement.

E THE CHAIRMAN: Mr Kirk, that is the situation.

MR KIRK: Quite unacceptable. I also want the photocopy of his notebook. I do not have that either.

THE LEGAL ASSESSOR: Mr Kirk, I think this is wandering. You are still out on your second limb again. I do not think it is relevant to examining evidence of this officer.

F MR KIRK: So the fact that you instructed him to produce his contemporaneous note – that means his notebook – and the statement that was used in court, you are now withdrawing my right to have them. Is that how I understand it?

G THE LEGAL ASSESSOR: His statement, I think it was. (To the witness): It was your statement you thought was downstairs.

A That is correct.

MR KIRK: You are now directing ---

H D3/60

A THE LEGAL ASSESSOR: It is not there.

MR KIRK: Yes, but I cannot proceed with my cross-examination without it, because it is so different ---

THE LEGAL ASSESSOR: What is the point you want to make in cross-examination?

B MR KIRK: Because there are serious differences between the statement he made in October of this year for the Royal College, and the statements he made at the time of the incident and at the time for the court a few days later.

THE LEGAL ASSESSOR: Mr Kirk, this witness has shown you his notes.

MR KIRK: I do not believe it.

C THE WITNESS: The incident booklet.

THE LEGAL ASSESSOR: Which he says is a note of the statement ---

MR KIRK: That does not affect the right under the laws of disclosure to have copies of my custody records.

D THE LEGAL ASSESSOR: We are not dealing with disclosure with this Committee. We are dealing with the particulars surrounding the charges which were found – the convictions.

MR KIRK: They are trying to bury my records of custody, because they will show that he has lied to the previous court.

E THE LEGAL ASSESSOR: This is, again, your ---

MR KIRK: But the law of PACE allows me to have these documents, which is why it is subject to judicial review. The prosecution may or may not be prepared to tell you this, but this case is also listed for judicial review for that very purpose. If you allowed them to be produced over the lunch, I would be able to cancel my judicial review, but now you have joined the argument that PACE law only can be used when it is suitable for the prosecution.

F THE LEGAL ASSESSOR: That is the advice I shall give the Committee, which it accepts. Do you have any other questions?

MISS FOSTER: If Mr Kirk has no further questions ---

G MR KIRK: Of the witness?

THE LEGAL ASSESSOR: Do you have any further questions? I thought you had sat down.

H

X

A MR KIRK: I thought we were going to deal with the witness summons problem up at the court. Has that been dealt with?

THE LEGAL ASSESSOR: That is not this witness.

MR KIRK: No, but that is what I thought we were going to do.

B THE LEGAL ASSESSOR: Have you finished with this witness?

MR KIRK: No.

THE LEGAL ASSESSOR: What other questions do you have?

MR KIRK: I am in difficulties without the contemporaneous notes.

C THE LEGAL ASSESSOR: So be it. You can complain to another court if needs be, but that is not relevant.

MR KIRK: I would like the Committee to view this video of the incident. May I explain this: part of the judicial review application is that they have deliberately withheld the first part of the video so only half of the journey is shown.

D THE LEGAL ASSESSOR: This is relevant to you saying that the officer is not accurate in his statement.

MR KIRK: Yes.

THE LEGAL ASSESSOR: This is a video. Is it taken by a street camera?

E MR KIRK: By the police overhead camera.

MR KIRK: I will have to talk you through it because a lot of it is irrelevant, and we will switch it off once it goes past the incident, because it does go on for hours. It is only going to take about four minutes.

F (The video recording was played)

THE LEGAL ASSESSOR: It is going on at a reading of 2.6.

G MR KIRK: My car is a blue Peugeot which is on the left there now. There is a police car following me down past the Cardiff Royal Infirmary, three lane traffic, not exceeding twenty mph. You will see no blue lights flashing, and you will see no headlights flashing later on. The speed of traffic is as the speed of the film.

THE LEGAL ASSESSOR: You have now gone out of sight.

H D3/62

A MR KIRK: We are now waiting at the point where they cause a road block by the police. The cars will be coming round the corner from the left of the screen to the right of the screen. Mine is a blue Peugeot with a sick cat and two dogs in it, and the van will be identified immediately following behind me. In the foreground, you will see, in due course, a police van coming from left to right to block any traffic in front of me from proceeding. It is obvious that this was being viewed for the police, because it in fact homes on to the car once it comes into view. That is the suggestion of the defence. I think that is my car now,
B but it will not be my car. I never have a car for obvious reasons – no blue lights flashing, no headlights flashing.

THE LEGAL ASSESSOR: Which is your car?

MR KIRK: The blue car – the blue Peugeot.

C THE LEGAL ASSESSOR: The light blue?

MR KIRK: Yes, the light blue, diesel Peugeot. There is the police car blocking the traffic. Now, will you please watch this. It is eleven seconds from knocking on the door – 1-2-3-4-5-6-7-8-9-10-11. There is a member of the profession, in public. Can I ask you to note that they then left the van with the doors open, me under arrest, may I suggest, with the hope I would do a runner so they could add to the charges. I wish to leave the video in the custody of the court. We only need to watch another minute of it. If it does run on, it shows how the dogs were taken away and I was eventually taken away, which is not relevant to this
D Committee, but it is there if somebody wants to follow the whole length of it. I think that is sufficient.

THE LEGAL ASSESSOR: Summarise the points you want to make.

E MR KIRK: I think that is sufficient.

(Video recording concluded)

MR KIRK: It is the action of this police officer and the way he dragged me out of the car, and the fact there was no high speed car chase, no blue lights and no lights flashing.

F THE LEGAL ASSESSOR: Let us get the points.

MR KIRK: No blue lights flashing; no headlights flashing; no indication of me trying to get away from there, as was said in the lower court

THE LEGAL ASSESSOR: Three points.

G MR KIRK: And dragged out of him again today that I tried to get away.

THE LEGAL ASSESSOR: Those are the three points.

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A MR KIRK: Then the manner in which I was attacked. Glass was smashed right across the dogs and the injured cat, and me.

THE LEGAL ASSESSOR: The points you want to make, which we can see there, are no blue lights, no headlights and what is the third one?

MR KIRK: The manner in which he got me out of the car.

B THE LEGAL ASSESSOR: Those are the three points.

MR KIRK: The fourth point is, is there any aspect there to show that I acted unprofessionally?

THE LEGAL ASSESSOR: The last is comment on fact.

C MR KIRK: (To the witness): That is quite different from what you told the court and the information you gave to the barrister in the lower court, is it not?

THE LEGAL ASSESSOR: Do you agree?

A No, sir.

D MR KIRK: There is no attempt there of me trying to get away, is there?

A Yes, sir.

Q There is?

A There is.

Q Can you tell the court what you saw on that video that I might have missed.

E A Yes, your failing to stop. You had been asked on two occasions, to stop – to pull over to the side of the road – and you failed to do so.

Q I was asked... I was never asked.

THE LEGAL ASSESSOR: Did you ask or another officer?

A My colleague, PC Price ---

F MR KIRK: That is hearsay. Were you present in the hearing of that?

A I saw PC Price go to the vehicle, and knock on the passenger window indicating for you to pull over. He then went to the driver's door, knocked on the window and you locked your door. The lights changed to green and you drove off along the road.

G Q I put it to you that that did not happen.

A Prior to that point, I had switched off the blue flashing beacons fitted to the vehicle, because it was not a high speed pursuit. The vehicle was driving in a normal manner, and I did not want members of the public moving aside believing that I wanted to proceed at a fast pace. Having switched off the lights, I then followed the vehicle, using my personal radio to

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A inform other units of what had occurred. At this point, the camera room then got on to the situation and started following myself and the vehicle I was following. Hence, the second police van coming to my assistance and causing that vehicle to stop.

Q Why was none of this given to the lower court?

B **A** A copy of my statement, which was made from my contemporaneous note was, which is in this incident booklet. The solicitors at the court would have had that statement, and had I gone to court to produce evidence, I would have read from this notebook.

Q Are you saying that your notebook and your statement for court contained nothing more than what is in that book before you?

A My statement at court will say that, at one point, I had a blue flashing beacon illuminated. As I have just explained, they were extinguished because it was not a pursuit but a follow.

C **Q** But the statement does not say that.

A I cannot explain ---

Q The statement does not say it.

A I do not have the statement in front of me, so I cannot ---

D **Q** So you cannot tell the court your involvement in this properly without the statement, and nor can I cross-examine you. Do you agree on that?

A I can tell you exactly what was said.

THE LEGAL ASSESSOR: That is comment, Mr Kirk.

THE WITNESS: The statement is in my contemporaneous note.

E **MR KIRK:** But that is only part of your record, is it not?

A That is my record of the incident.

Q You were asked to produce videos of my time in custody, which were very frightening to me.

F **THE LEGAL ASSESSOR:** That is going on to something else – time in custody – quite different.

MR KIRK: Were you not?

THE LEGAL ASSESSOR: That is quite different, Mr Kirk.

G **MR KIRK:** Look at this.

THE LEGAL ASSESSOR: You have accepted that ruling.

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A MR KIRK: Would you like to look at this?

THE CHAIRMAN: Mr Kirk, we have been advised that is a different matter.

MR KIRK: It is not; it is the same one.

THE LEGAL ASSESSOR: What is the question you want to put?

B MR KIRK: He said this morning that no video was taken of my custody. I will tell you the time he did it. He said that there were no videos taken of me in the custody suite of either police station, Rumney or Roath.

THE LEGAL ASSESSOR: I do not think he did.

C MR KIRK: He did. Could we refer this to the official copy to confirm that?

THE SHORTHAND WRITER: It will take me quite a while to look for it.

THE LEGAL ASSESSOR: Anyhow, the issue of whether tapes were taken – a video – in your custody is not relevant to the consideration of this Committee.

D MR KIRK: Is this evidence based on his credibility and, if it is, I would argue, with all due respect, there are a number of ---

THE LEGAL ASSESSOR: With respect, Mr Kirk, I think you are using credibility rather widely over the cross-examination.

MR KIRK: He is lying.

E THE LEGAL ASSESSOR: Rather widely. He says he is not aware of any video in custody and, in any event, if there were any, I would advise the Committee that it would not be relevant.

F MR KIRK: So this statement of Kay Hinchey(?), asked to get the custody videos of these police stations... Can I quote – “A copy from the original tape for such and such an incident for PC Osborne” and it is signed – “I will produce this copy in court if required.” It does give a clear indication that he was aware.

THE LEGAL ASSESSOR: Who is this?

MR KIRK: Osborne.

G THE LEGAL ASSESSOR: That statement there.

MR KIRK: It has come to me by mistake, but please do not think I am going to ignore it because it has come to me by mistake.

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D3/66

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D3/57

A THE LEGAL ASSESSOR: Is this the witness statement? To what are you referring?

MR KIRK: Kay Hinchey – one of the people who play with all these custody videos.

THE LEGAL ASSESSOR: That may be by mistake or not. You can apply where it is relevant, but it is not relevant to these proceedings.

B MR KIRK: (To the witness): Can I ask what custody video you have brought with you?

A I spoke to Kay Hinchey the day before yesterday, believing that you may require an up-to-date copy of the video you have just seen. I did not want to produce the original because that is kept in our video library. I spoke to Miss Hinchey, who then produced this video together with a corroborating ---

C THE LEGAL ASSESSOR: Which is a copy of that.

A Which is a copy of that one, sir, straight from the original. In that case, she produced the exhibit label and the statement for that video.

MR KIRK: And the custody video?

A I am unaware of any custody video.

D THE LEGAL ASSESSOR: I have ruled the custody video irrelevant, Mr Kirk.

MR KIRK: The judge in Newport accepted that the ones you produced of you and me in custody ---

THE CHAIRMAN: Mr Kirk.

E MR KIRK: --- because it had been deliberately wiped ---

THE LEGAL ASSESSOR: Mr Kirk, I have advised the Committee – the Chairman will have a word with you – that you must abide by the decision of the Committee given on my advice. If you want to make a complaint, you make it elsewhere.

THE CHAIRMAN: Is that clear, Mr Kirk?

F MR KIRK: Yes.

THE CHAIRMAN: We are being as tolerant as possible, I assure you.

G MR KIRK: There is a judicial review application because the judges ordered these things to be handed over, and they are refusing, and now you know why. It is in the hands of a higher court in any event, but I feel these matters should be able to be put to this witness, especially the content of the time when I was in custody and the way I was being treated whilst in custody, which is contrary to the evidence he has already given. (To the witness): Are you aware of what has happened since the magistrates' court case?

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A THE LEGAL ASSESSOR: In what respect? In respect of the appeal or what?

MR KIRK: In respect of the usual proceedings that follow a magistrates' court case.

B THE LEGAL ASSESSOR: That is not relevant to this Committee. Judicial proceedings are separate and there are, no doubt, records, but the relevance of that matter is nothing to do with this Committee on this occasion.

THE CHAIRMAN: Do you have any further questions of this witness, relevant to this case?

MR KIRK: Yes. (To the witness): Is there any information that you can see from that video, or from the custody notes, or from your notebook or from your statement that was used in court, that in any way displays unprofessional conduct?

C A I cannot speak in relation to your actual profession, but what I can say is that, as a member of the public, when being called upon to be stopped by a police officer on duty in uniform – firstly in a police vehicle, secondly by an officer knocking on your window and, thirdly, by myself – asking or requiring you to open or unlock your vehicle, I would expect you to comply with my request. In relation to your profession, I cannot make any comment.

D Q That was not your request. It was, you say, from another officer, so that is just hearsay, is it not?

A I was a witness to what the officer did.

Q You did not hear what he said.

THE CHAIRMAN: Mr Kirk, you asked the officer for an opinion and he gave it.

E MR KIRK: I asked you if the information upon which you would rely would be in your notebook and in your statement, so are you saying that that information is in your statement? No, not that one.

THE LEGAL ASSESSOR: Mr Kirk, you are going back.

MR KIRK: In your statement.

F THE CHAIRMAN: Mr Kirk, I think this has gone far enough.

MISS FOSTER: I do not wish to ask any questions of the officer.

G MR KIRK: May I ask that the video come back and be kept with the court, because I have other uses for it.

H D3/68

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Questioned by THE COMMITTEE

THE CHAIRMAN: With regard to the drugs and medical equipment that were found on Mr Kirk's person, do you have any record of the type of medicines and the state of the syringes, etc?

B

A Yes. I spoke to the doctor that attended at Rumney police station at the request of the custody staff. I believe there were some tablets and some ampoules which I was not aware of. I asked his professional opinion. He was happy that they were not for people. He believed quite rightly that ---

Q They were animal medicines.

A In relation to animal medicines and not what I suspected.

C

THE CHAIRMAN: Are there any further questions?

MR KIRK: Yes.

Further cross-examination by MR KIRK

D

Q That would be recorded on the custody record which you will not hand over, would it not?

THE CHAIRMAN: Mr Kirk, I thought you had finished your questioning.

MR KIRK: Could I ask, through the court, that he answer that what was in my pockets would be recorded normally on the custody records – the records which we are still waiting for.

E

THE LEGAL ASSESSOR: You are still after the records. The evidence did you no harm whatsoever. These were animal medicines.

MR KIRK: Hearsay. (To the witness): The doctor would have made a record of that, would he not?

F

THE LEGAL ASSESSOR: If you wish to challenge that they were not animal medicines... You are looking for the records all the time. That is what you are after.

MR KIRK: They were not all for animals, but they are withholding the records because they know the records contain information ---

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THE LEGAL ASSESSOR: You are getting back on the records.

MR KIRK: --- that will undermine their case.

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A THE LEGAL ASSESSOR: With great respect, you are again on the limb of records, records, records.

MR KIRK: Which I will never let go of.

THE LEGAL ASSESSOR: We have ruled on that. I say we ruled – I have advised the Committee --

B MR KIRK: Except when it was to your advantage.

THE LEGAL ASSESSOR: They have accepted my advice.

THE CHAIRMAN: Thank you, officer, you are free to go.

C (The witness withdrew)

MISS FOSTER: Sir, there are two items of documentary evidence in relation to this charge that I would invite the Committee to look at. The first of them is a record you will have seen before, dated 13 March 2001, at page A10/9. You may remember that there were a number of judicial review applications heard before Brooke LJ and Morison J. May I take you to page A10/11 and paragraph 11. That paragraph reads:

D "I turn to the next application for permission in proceedings CO/3422/2000. This application relates to the decision of the Cardiff Magistrates' Court on 18 September 2000. Mr Kirk was arrested on 5 April for a number of offences, including failure to provide a breath test and no insurance. He appeared before the court on 11 April and pleaded guilty to all the five charges. He said that he became aware after he had pleaded guilty that his failure to give a breath test was taped and videoed. He said that the film would show that the police smashed their way into his car as he was stuck in a stationary queue of traffic. The circumstances in which a person may change his plea are limited and I am bound to say that I can see no grounds for believing that the magistrates erred in the exercise of their powers to permit a change of plea. There is no basis for suggesting that the original plea was either equivocal or confused. It was a deliberate decision from an experienced litigant. I refuse the application as it has no merit in law."

F The next document, which is dated 4 October 2001, was before His Honour Judge Jacobs, and it was an application to reinstate an appeal which related to a number of matters. As I indicated earlier in these proceedings, there was an error in the court in their totting-up procedures and, for that reason, the element of penalty, rather than conviction, came under consideration, although an application had been made in respect of conviction. In fact, as G we shall see, that was a matter that the court rejected. May I take you to page A10/19. It may say A/13, and it is a document which should have been duplicated for both bundles. It appears as the original numbering of A13/19, but under folder 10. At letter C, Judge Jacobs says this:

H D3/70