

### 3rd DRAFT

#### Action 1 claim 8.6, 20 May 1993 arrest at Grand Avenue Cardiff

1. Arrested for being a 'mental patient' or for the 'theft of his own motor cycle'
2. Then detained in custody for 'failing to supply name and address'
3. Then, when neither of those 'stacked up', charged with 'assault' and 'resisting arrest' by a uniformed police officer
4. Then, when those allegations in interview, were clearly never going to hold the
5. accused was then charged for 'being in possession of an offensive weapon' accidentally introduced by the prisoner, as a joke, when seeing these police officers were continuing to take instructions from their senior management
6. The police had no idea what the embriotomy wire was until told by the arresting officer, PC Thomas, in the presence of their victim but the officer had overlooked the fact he should not have been there but gone on 'compulsory' three day extra leave following any 'assault allegation' on a police officer
7. The interview tape had, near the start had recorded their victim's identity by full name, address and date of birth- so it had to be redacted.
8. The learned judge raised the point from little custody record disclosed that the Appellant's name was already in the custody records by that mid to late afternoon with PC Thomas and others already talking with Guernsey police.
9. Crown Prosecution Service, upon being notified next morning, quickly instructed police senior management to withdraw the 'offensive weapon' charge as PC Thomas had already recognised the veterinary equipment and their victim was yet to be arrested and cautioned for this potentially custodial offence.
10. So, before two male magistrates an anonymous police inspector successfully pleaded their prisoner could not be 'identified' while, at the same time, pleading with Guernsey police to expedite an extradition order.
11. The Appellant's letter, dictated to his veterinary nurse over a crowded prison telephone, obtained by the usual tobacco bribes, to The Royal College of Veterinary Surgeons mysteriously achieved his eventual release with no reason!

#### The Conspiracy

12. Senior management was left with the usual doctoring of their victim's interview tapes, to only supply a heavily redacted version of the official transcript for His Honour to contemplate upon, itself only being available because the Appellant had moved it between over a dozen premises while storing it for 20 years.
13. Barry Inspector D Hill's purported memo, ordering a copy of tape to be given to the Appellant is routine procedure when no intention of giving him one was a lot nearer the truth. The memo, incidentally, records the Appellant had never asked for a tape!
14. The Appellant, in custody, routinely asks for custody records in full but rarely gets them. In his last term of imprisonment, when communicating with the police prior to arrest, such records were deliberately withheld even from the jury.
15. Para 332 Action 1 claim 8.13 stolen motorcycle not returned of this 2015 judgment records why the police had stolen this motorcycle's Guernsey number plate, in the first place, as it was to prevent Appellant recovery but as in both

these incidents with the same BMW, simple reading of the chassis number and States of Guernsey road fund tax quickly traces the current registered owner.

16. This 8.13 incident has, by this same judge, been '*put to the strict proof thereof*' that the 20<sup>th</sup> May 1993 Cardiff police would have equally as quickly found the name of the current owner having bought her from a Guernsey policeman.
17. Appellant's very same name and address, on arrest, was given to the police as was to other custody sergeants -see para 930. Action 2 claim 14-13th Dec 2000 campervan outside Cardiff County Court and para1041 Action 3 claim 4.1-13th Dec 2001 Audi Estate Car stopped Merthyr Mawr Road, Bridgend causing, on both occasions, expeditious release from custody and carrying no warning of any subsequent summons or charge.
18. So, who was the mysterious officer from Barry, in the dead of night, who was called over to successfully identify the Appellant? Where is the whereabouts of Inspector Trigg in all this after personally receiving, just minutes before the Appellant's arrest, yet another letter complaining of the, now, almost day to day harassment of their local veterinary surgeon?
19. Was not of obvious significance why this Appellant, in custody, deliberately used up his only allowed telephone call by choosing Inspector Trigg for proof of his identity?
20. From December 1992 onwards, when he had been accused of burning down his own garage housing his Piper Cub and was then promptly stopped on his motor bike, just a few days later, for police to obtain his insurance company's name?
21. The Appellant had no obligation to speak at any time, under the old 1984 PACE, especially after having given his name address and date of birth.
22. Amongst the significant omissions, due to the passage of time, required for future courts, as recorded in the judgment, were the angry clients crowding around the Panda car holding him with another prisoner. The arresting officer and at least three others were being bombarded by his clients, waiting for the surgery to open with their cats and dogs, now appearing very angry as to delay and, more to the point what was being told to them.

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140. Action 1 claim 8.6, 20 May 1993 arrest at Grand Avenue Cardiff. In May 1993 Mr Kirk had a veterinary surgery in Ely, Cardiff, described by police witnesses as a somewhat poor neighbourhood, a description with which elsewhere Mr Kirk did not disagree, and nor would I.
141. It is common ground that Mr Kirk had parked his BMW 1000cc motorcycle registered in fact in the Channel Islands under index number 1876, and was nearby, in his motorcycle leathers; that PC Phillip Thomas took interest in the motorcycle, (which he described as a valuable bike but in dirty unkempt condition); that PC Thomas checked the index number with the PNC and became aware of Mr Kirk who was looking at the motorcycle; and that having approached Mr Kirk who was walking away there came a time shortly afterwards when he arrested him. Mr Kirk was taken to Fairwater Police Station and detained; he was interviewed between 22:45 and 23:45 hours, but not released, and indeed in the morning was transferred to the Magistrates Court where the Magistrates remanded him in custody where he remained for some 4 days in prison. In the event, charges were made but later withdrawn. Thus the arrest led to important consequences for Mr Kirk.

142. The pleaded case is that he was arrested unlawfully in that there were no lawful reasons given to him for his arrest and detention; that the station Sergeant was aware of his identity but refused to recognise him or confirm the identity; and that he was unlawfully detained all night in the police cells until brought before Cardiff Magistrates Court the following morning when “evidence was maliciously offered by the Defendants that they could not confirm the identity of the Plaintiff”.

143. It further alleges that he was maliciously prosecuted [the charges being of assault with intent to resist arrest, possession of an offensive weapon, and ‘refusing to give name and address’ see A1/1.254-256] but the charges were eventually withdrawn and he was released. (Notice was sent by the CPS on 30 July 1993 of discontinuance of the assault and possession charges ‘because it is not in the public interest to proceed see A1/1.285’. Mr Kirk had it reported in the local paper).

**Of extreme importance for a case, such as this, to have proceeded was because it was ‘*in the public interest*’ confirmed by the newspaper coverage that followed when all charges were dropped in his absence.**

144. As to the times of alleged unlawful detention in custody, it is pleaded as being from 14:20 on 20<sup>th</sup> May 1993 [in other words the time of his arrival in custody at Fairwater police station ] until 10:35 on 21<sup>st</sup> May 1993 [in other words when he was remanded in custody by the Cardiff Magistrates].

145. The Defendant pleads that while investigating the motorcycle, and observing a hypodermic syringe and vials of drugs in the rear panniers of the motorcycle, PC Thomas observed Mr Kirk nearby wearing leather motorcycle trousers, approached him but he then started to walk away and that the officer attempted to speak to Mr Kirk but Mr Kirk

**Were not these veterinary drugs, including found vials of ‘white powder’ not labelled?**

146. ignored the officer “and attempted to make off. The Plaintiff then ran off, the officer gave chase. The officer eventually took hold of the Plaintiff and the two men went to the ground. The officer informed the Plaintiff that he was being arrested. He was told the reason for the arrest”.

147. It is further pleaded that Mr Kirk was taken to the police station where he refused to give his name or address or otherwise to identify himself and was therefore lawfully detained in custody. It is denied that the police officers maliciously prosecuted the Claimant.

148. Mr Kirk’s witness statement of 19<sup>th</sup> June 2009 deals with this incident from paragraph 494 to paragraph 533. In essence, Mr Kirk states that on 20<sup>th</sup> May 1993 he attended Barry Police Station to deliver a letter of complaint and saw Inspector “Twigg” [in fact Trigg], he himself leaving Barry Police Station on this very motorcycle. On arrival at Ely, he sat in the sun on railings but several police arrived so he walked away to avoid confrontation and his time being wasted. “The next thing I hear is someone asking questions from behind, which I ignored. The next thing I know I’m knocked to the ground and restrained with handcuffs behind my back”. Once at the police station, “I was addressed as Mr Kirk and it was obvious they knew who I was by having already made complaint on a host of matters including theft from the Ely veterinary surgery premises”.

149. The fact of complaints being made by Mr Kirk to the local police station is consistent with the evidence of Mr Kirk's secretary which I note below, albeit her evidence is not precise as to the period of time concerned.

150. He says that there was a note attached to the charge or large day book in the custody suite which included a note that he was violent, which, he said in oral evidence, indicated to him that the police must have been in touch with the Guernsey Police. He also says that at the taped interview police again addressed him as Mr Kirk "with identity and occupation never in doubt".

151. This is of some importance, in that the custody record states that he was "arrested s25 PACE". Section 25 Police and Criminal Evidence Act provides,

"(1) Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, *he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.*

(2) In this section, "the relevant person" means any person whom the constable has reasonable grounds to suspect of having committed or attempted to commit the offence or of being in the course of committing or attempting it.

(3) *The general arrest conditions are-*

(a) *that the name of the relevant person is unknown to, and cannot be readily ascertained by, the constable;*

(b) *that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;*

(c) that –

(i) *the relevant person has failed to furnish a satisfactory address for service; or*

(ii) *the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;*

(emphasis supplied).

152. His case is, firstly that he was targeted by the police officers who arrested him, and secondly that in any event the police knew perfectly well his identity, and he says, his address.

153. In oral evidence, Mr Kirk had imperfect memory, to say the least, of various letters that he had written by way of complaint on this subject and I drew his attention to each of them. In essentially date order, they are as follows.

By letter of 30 June 1993 he complained of besetting attention upon him by a number of police officers on the occasion of the royal visit of Princess Diana to the area that same day but also complained of the arrest and detention of 20 May 1993, that he was subjected to 4 days in prison custody "with the police telling the Court they opposed my release as I could not be identified. My pockets contained veterinary equipment and letters from both the bank and Borough Council to me" [A1/1.284].

On 22 June 1993 he wrote to the clerk to the Cardiff Magistrates Court, complaining that the full custody records had been withheld from him and that he had been refused a copy of tape interview [A1/1.122G], a complaint which he was to repeat.

**His name and address of residence was also found in letters in his pocket. The audit trail of paperwork long after, even identified a member of police staff at Fairwater police station, by the name of WPC Griffiths, has possession of that tape and a ‘copy’ of was promised, over the telephone, would be ‘sent’ on to him.**

**The female officer was then over ruled when it was found the original copy, asked to be preserved by the Appellant upon not receiving what she had promised, contains further proof of conspiracy to pervert the course of justice and just why someone, outside Wales, should investigate this malicious conduct, the common thread throughout all three of these and more Actions yet to come.**

There are various letters up to a letter dated 4 April 1995 [A1/1.293]. It is unnecessary here to record the contents of each letter, but I have read and considered them: letter of 7.7.1993 [A1/1.310]; letter of 9.9.1993 [A1/1.122I]; letter of 15.12.1993 [A1/1.313]; and letter of 7.3.1995 [A1/1.291].

154. For convenience I note at this point the important fact that Mr Kirk had on him, when searched by the police, a letter from the Midland Bank, Guernsey Area Office, addressed to “M J Kirk Esq, BVSC MRCVS 51 Tynewydd Road, Barry”; 3 cheques variously made out by clients to the Animal Health Centre [ink stamped as payee] each of 18 May 1993; and a further letter from the valuation office addressed to the occupier “Surgery and premises, Burial Lane, Llantwit Major” [A1/1.242, 244, and 245 respectively].
155. In evidence in chief, Mr Kirk denied assaulting resisting or running away from the police officer, and “wished to stress” that the police officer did not ask him his name or address before arresting him: “He definitely did not ask me my name, or address, or occupation”. In cross examination, he said that when he saw two police officers [PC Thomas, and PC Beer] looking in the panniers he wondered what to do, and “assumed they knew me”. By the time he gave oral evidence himself, he was willing to accept that at that stage PC Thomas may not have known who he was. (During the course of cross-examination of PC Thomas, Mr Kirk overnight had a change of heart as to the good faith of PC Thomas at the scene itself, initially having regarded PC Thomas as someone who had targeted him but being converted to the view that at the scene PC Thomas - who had formerly been employed as a nurse - thought him someone with a problem of mental ill health who might need help).
156. In his own oral evidence, he accepted that PC Thomas ‘approached him obviously wanting to speak to him’. It was ‘possible’ that PC Thomas had said to him may I speak to you about the bike, he did not remember. He agreed that ‘he did not say a single word’. His own account was of slipping out of his jacket when the police officer caught hold of what he was wearing. It was put to him “you walked off, he took a firm hold of you, that’s when you pulled your arm out of your sleeve?”; he replied “it’s a permutation that might have happened. He caught hold of me when I was walking off. In any event you’re pretty close to what happened. I was not aggressive to him I simply wanted to get away”.

157. He himself describes walking so as to take “very big steps” away from the officer and agreed that he did change direction, thinking that the other officer was coming towards him. He remained very firm that PC Thomas had not asked his name and address – whether on Charteris Green (a nearby grassed area), before he was arrested, or when in handcuffs; and he did not accept that he had been asked for his name and address in the van. As to this, there is a significant question and answer in the interview, namely DC Griffiths “do you accept that you did not give your name and your address, when requested to by this officer?” Answer “Initially I did not” (A1/1.165). Asked again whether he had been asked for his name and address in the van, he said “*I remember being asked, I gave my name but not my address. I’m happy I gave my name, not necessarily to this officer*” (emphasis supplied).
158. As he had said in interview, he told me that he had not given his name at the police station, because there was no need to do so, in that police were calling him by his name, “Mr Kirk”.
159. The custody record provides space for record by the custody sergeant of the brief grounds for arrest reported to him by the arresting officer on his arrival at the station, here PC Thomas. This includes “on being questioned he ran away. Was apprehended a short distance away struggled. Refused to speak. M/cycle 1876 possibly stolen. Arrested s25 PACE”.
160. The custody record has entries from a number of officers, from whom I received witness and oral evidence. The custody sergeant on duty at 14:20 hours when Mr Kirk arrived at Fairwater Police Station was (now) retired PS Huckfield; also on custody suite duty from 14:00 to 22:00 hours was PC Donovan. PS 1846 Brown took over as custody sergeant from PS Huckfield.
161. The essence of those entries is that Mr Kirk refused to speak, save that an entry at 20:18 hours relates he was requesting a copy of Codes of Practice, a doctor, and that Inspector Trigg at Barry Police Station be informed as well as the duty solicitor. An entry at 20:38 is that Mr Andrew Trigg was informed, son of Inspector Trigg, but Inspector Trigg was out not expected home until about 11.00pm. The initial authorisation of detention recorded by PS Huckfield was “to obtain evidence by questioning and s25 PACE” (A1/1.211). An entry at 21:00 hours reads “Review. Detention is necessary to (1) further enquiries in relation to his lawful possession of the BMW motorcycle. At present enquiries have not established whether it is lawful possession or not (2) for evidence to be obtained by questioning; in order to prove his involvement or disprove his involvement in relation to the incident; (3) to establish his identity. At present enquiries are ongoing in relation to this”.

**Utter nonsense – Neither Inspector Trigg was ever attempted to be contacted, the appellant suspects, before magistrates hearing nor was an independent solicitor either provided (both fundamental under PACE) with it whilst their victim was in overnight police cells and later repeated in both the Cardiff magistrates cells and HM prison.**

162. For completeness, I record that Mr (then PC 3202) Paines gave a witness statement of 17 July 2008 and gave oral evidence. He had been informed that in a witness statement PC Thomas identified him as assisting in checking the motorcycle; he had no memory of it then. Likewise DS 1978 Powell, of the stolen vehicle squad, gave a witness statement

(of 13.10.2003) that he would on that day have carried out a physical examination of the vehicle but the mere fact that the motorcycle was displaying a non standard UK registration number would have led him to believe that it may have been registered outside the UK, and he would have passed any stamped vehicle identification number to the investigating officer in order for him to continue enquiries (A1/1.192).

### **The motorcycle tax disc had Guernsey written across it with a Guernsey number plate**

163. At the police station Mr Kirk was interviewed at 10.55pm (A1/1.158). He told me, “What I remember during the interview is my name and address were clear to everyone including the duty solicitor. It would have been a Tynewydd Road address, either 51-53 Tynewydd Road the veterinary complex, or 52 Tynewydd Road which is where I spent some of my nights at the time”. There is a police record of tape recorded interview starting at 10:55pm and concluding at 11:40pm (A1/1.158 to 191). I refer to it below.
164. In cross examination he adhered to his account that he had been addressed by the police as Maurice Kirk, saying that this was so throughout most of his custody from about 2:30 that afternoon until about 8:20. He did not dissent from the proposition that to those dealing with his custody, and even the doctor who attended him, he had not volunteered or disclosed his address. He was inclined to agree he had said very little to those who approached him during the time he was in custody, other than in interview. Illustratively, his detention was reviewed at 21.00 by Acting Inspector Crutcher, who wrote in the custody record “throughout the review he was sat down with his head dropped forward. He did not utter a word”; Mr Kirk told me that he could not deny, or confirm, the truth of this entry.
165. It is a further part of his written and oral evidence that during the afternoon when he was in the police cell, somebody came to the grille, looked in, and identified him by name to another. I note he said the same thing in interview that same evening, putting the time as about 4.00pm, ‘because of the amount of light coming in to the cell’. I further note that there is a printout of enquiry of the PNC on 20.05.93, timed at 16:17, not the subject of questions by either side to any police officer, but identifying him by full name and date of birth (my emphasis, ‘Kirk/Maurice/John born 12.03.45’) [A1/1.262].
166. Then, moving from the events at the police station itself, he said that at the Magistrates’ Court in the morning, he had spoken for 15 minutes on the clock, telling them everything he could to prove his identity. This mirrors his letters of complaint very close to the event.
167. On 21 May 1993 the magistrates refused him bail, and there is a bail refusal form of that date in his name, with an address ‘52 Tynewydd Road, Barry, S Glam’, it appears filled in at the Magistrates’ Court that morning. Mr Kirk thought it quite likely that this was the address he had given them that day. It records the reasons for withholding bail as being that the court was satisfied that there were substantial grounds for believing that the Defendant would fail to surrender to custody and ‘the character antecedents associations and community ties of the Defendant’ (A1/1.257). I refrain from any concluded view on the decision of the magistrates, (however surprising I find their decision, to say the very least), since (i) it is a matter for which the magistrates carry responsibility; (ii) the claim in these proceedings is not against them; and (iii) indeed for reasons of public policy

claim would not lie against a court or the members of a court in respect of such a decision.

168. The claim against the police for unlawful detention is confined to his detention by the police up to the time when he appeared before the magistrates. This is correct in law, because from that time onwards it was the decision of the magistrates which caused his detention. Whilst Mr Kirk blames the police for his detention by the magistrates, by 'maliciously failing to identify him' (see above), this was not the cause of his detention by them: the magistrates were willing to accept the address given as being that of Mr Kirk (which presupposes accepting his identity as Maurice Kirk), and so the further detention was not on the grounds that his address (or identity) was unknown.

169. The written record of tape recorded interview contains much by way of detailed transcription of question and answer, but is not a complete record of every question and every answer. PC Thomas was still an inexperienced police officer, as a probationer. The interview was conducted by DC Griffiths a more experienced officer and PC Thomas himself, with a duty solicitor present Ian Williams.

**The withheld interrogation tape of their prisoner will have recorded:**

**1) PC Thomas stating he had immediately recognised the 'garrotte type instrument' as veterinary equipment.**

**(Dystokia, difficulty in birth, was due to a dead oversized ankylosed foetus in the Appellant's very first caesarean, just a few days from qualifying, with the only available help coming from than an old lady holding up her paraffin lantern. A rare example of a *schistisoma bovis*, had further been complicated by the fact the cow was carrying live Siamese twins).**

**2) the prisoner indicating both his name and addresses and how else they could be proved other than what were found in his pockets by simply telephoning the 24/7 veterinary practice**

**3) their victim being addressed as 'Mr Kirk' by three different police officers**

**4) then the purported 'duty solicitor' confirming seeing the prisoner's name on the large charge book in the custody foyer while both had to walk passed it, in full view, to reach the interrogation room from the cell**

**5) and even had left the room, with different police officers, to examine the written record created before the interrogation had even started.**

170. An overview is that Mr Kirk was asserting time and again, in bitter and sarcastic terms, that the police knew perfectly well who he was and that this followed lodging his two serious complaints of harassment when they knew all about this; more than once, he referred to a piece of paper which he said he had seen on the custody Sergeant's desk, with his name and address on it, and that they had only to look at that, which had his correct address. On the part of the police officers, they spent some of the interview dealing with, or fending off questions from Mr Kirk, and they were asking him to confirm expressly his address. The custody record on its first page has as its first entry under

surname “refused”. Then, in capitals there has been entered ‘surname KIRK first names MAURICE JOHN (disclosed in interview)’.

171. The following are a sample of the exchanges as to address,

“Q. When the tape started I asked you your name Mr Maurice Kirk. Am I correct in saying that this is the first time, since the time you’ve been in custody, you’ve given your name? A. I’ve been addressed by the police as Maurice Kirk throughout most of my custody from about 2.30 this afternoon until about 8.20, when I again expressed concern about not getting my rights” (A1/1.158 at 158).

“Mr Kirk: I wish to know from you why I was arrested and why I have been detained for this period of time and why did it take over 6 hours for somebody to tell me what they considered why I was being detained” (at 159).

“Police: you were arrested.... under s 25 of the Police and Criminal Evidence Act.... Mr Kirk: But they knew who I was I was outside my surgery and the general public were telling them who I was and they knew who I was anyway, I’d just come from the police station, having lodged 2 serious complaints of harassment, they all knew all this. That is why I suspect they were there waiting for me when I returned to my surgery. What game are we playing here? I’ve been to the police station twice today to complain about harassment.... so to suggest these police officers didn’t know who I was and that is why they had the right to arrest me is absolute nonsense”. (at 161).

“Mr Kirk: Initially I did not [give name and address when requested by this officer ..[ – see full quotation above”] (page 165).

“Mr Kirk: Well who gave you the information to cause the Sergeant down there to write on my file as I came through the desk – Maurice Kirk – this man believed to be very violent underlined in red ink. If that didn’t come from Guernsey where did that information come from? If it wasn’t from this officer that arrested me?” (at 166).

... The Guernsey Police will have informed you by now that not only did I buy [the motorcycle] from the Guernsey Police.... You as a police officer will have been informed of this information during the last 6 hours of my custody when they contacted the Guernsey Police” (page 167).

That bike is parked outside my surgery at Ely on a regular basis and is seen by the Ely police officers on a regular basis”.

Q. What we have got is a letter that was found in your property when you came to the police station with an address on that. Is that the correct address? It’s in the name you gave at the start of the interview. A. What address? Q. Well what is your address Mr Kirk? A. There’s a piece of paper down on that desk which has my name and my address.... I want that document not destroyed.... Q. Mr Kirk we do need your address. A. Well you’ve got it. It’s on that piece of paper, go and get it and I’ll read it out to you, it’s only next door (177 – 178).

“Q. Why are you being difficult about this address? A. I’m not being difficult, I asked for that document just now, on the way to this room, I’ve told you where it is. I’ve

confirmed that it is the correct address. Duty Solicitor: Mr Kirk, all you're doing is prolonging your detention, if you were to tell the officers and they can check it out" (179).

**They left and checked it out the 'pinned to the day book note', no doubt, while the purported duty solicitor, Mr Williams, made his hasting retreat to be no longer 'available' for either criminal or subsequent 'time for a detailed witness statement' to taken for these civil proceedings.**

172. During the interview, (and not, I note, apparently the subject of any intimation before), it was suggested that Mr Kirk might be charged with assault. The reaction of Mr Kirk was "My main object, Sir, is to bust this conspiracy because these two idiots have now broken what they're up to. They are out to frame me for assaulting a police officer. That is what this is all about" (181). Shortly afterwards, Mr Kirk said: "I am a practising veterinary surgeon on duty tonight, being detained from my work, which is one of the purposes for you to detain me". He was then asked about 2 bits of wood joined by 2 bits of wire which were found in the panniers. When DC Griffiths raised the possibility of an offensive weapon Mr Kirk reacted with bitter sarcasm. The interview finished at 23.45 hours.

173. At 01:40 hours, the entry by PS Brown was "Review. Detention authorised and considered necessary as the accused persistently refused to provide details of home address and it is believed that if granted bail he will fail to appear. Solicitor aware – no representations. For Court 21/5/93 (D Brown [Custody Sergeant]". This entry at 01:40 is followed by entries of routine visits to the cell, until 08:20 hours "to [Cardiff Magistrates Court] and 08:45 hours accepted at Magistrates Court cells with appearance in Court 5 recorded as 10:35 am remand in custody until 24 May 1993.

**Guernsey police had now also informed South Wales Police (a separate judicial system) that there had been an arrest warrant outstanding for a trivial matter but not worthy of an extradition application. Cardiff police had other ideas and so deliberately failed to inform their prisoner or court next morning.**

174. There are three witness statements before me from PC Thomas, two dated 3.10.1997 and 6.2.2009 for the purposes of these proceedings, and one earlier statement dated 10 March 1997 (respectively at A1/1.123, 135 and 149). A copy of his police notebook, at A1/1.247 to 251, concludes at 2:00 am when he went off duty.

175. His principal statement 3.10.1997 relates him being called, with PC 3174 Beer, to a supermarket in Grand Avenue on an unrelated matter, and his attention being drawn to the motorcycle, as I have related above. A check on the index number on the PNC came back as "no trace" making him suspect that the motorcycle was stolen. A check of the frame and number likewise produced "no trace", and "I was now certain that the motorcycle was a stolen vehicle". Search of the panniers revealed white powder, hypodermic needle and syringes, and 2 pieces of wood with wire wrapped around each end of the twigs "they looked particularly lethal and capable of causing injury".

**When then stolen see p321 Action 1 claim 8.13 stolen motorcycle not returned the recovery driver also took the serial number, seen in his written log (Exhibit) with the**

**name ‘Kirk’ beside it, as the number plate had ‘mysteriously’ gone missing when police were in ‘full chase’? Mr Clode, paid for bike’s storage, had quickly located the present owner. Police had then told him not to inform the Appellant and it is probably why Dolman’s QC vehemently opposed his giving oral evidence.**

176. On seeing the male [Mr Kirk] in leather motorcycle trousers, he walked towards him but Mr Kirk walked off, he said stop that he wanted to speak to him but Mr Kirk took no notice and continued to walk away aimlessly and at times changing his direction. He describes catching up with Mr Kirk, who quickened his pace and “at this time I thought that Kirk might be a mental patient”. PC Thomas had previously been a staff nurse. He says he was still requesting Mr Kirk to stop but he was taking no notice, he put a hand on his left elbow to attract his attention when Mr Kirk wheeled his arm away and flung round to face him and he said to Mr Kirk “I just need to speak to you about motoring matters in relation to the motorcycle I’ve just been looking at”. On Mr Kirk starting to walk backwards away from him he decided Mr Kirk was not deaf “and I formed the opinion, from my previous experience, that he was likely to be a florid schizophrenic..... his demeanour started to become aggressive and irate.... He was tensed as if about to explode and now became very determined to get away from me. As he was walking backwards he turned and I considered that he was going to make a determined effort to get away and I therefore took a firm hold of him by taking hold of one of his arms. “Mr Kirk pulled his arm out of the sleeve and PC Thomas took him in a type of bear hug; “Mr Kirk started to struggle to try to get away from me” and PC Thomas swept him to the ground PC Beer then arrived and between them they got Mr Kirk onto the ground face first and placed handcuffs on his wrists. “At no time during this incident did Kirk say anything to myself or PC Beer”.

## **Liar**

177. (As can be seen from the account of Mr Kirk, up to this point there is little if any difference between himself and PC Thomas about what happened up to this point, save that Mr Kirk knows that the instrument in the pannier was an embryotomy wire).

178. PC Beer brought the police van, Mr Kirk was placed in the cage at the rear of it, and “I then said to Mr Kirk, “I am arresting you under section 25 of the Police And Criminal Evidence Act”. On taking Mr Kirk back to where the bike was we became aware that there was a veterinary surgery and “as a result of what I was told” he went into the surgery and spoke to a female who declined to give him any information. He arranged for the motorcycle to be taken back to the police station by other police officers. Put shortly, he enlisted other officers to examine the vehicle (see above); PC Thomas had seen that the expired licence on the motorcycle was a Guernsey one and he made enquiries later with the Guernsey Police. “Sometime during our enquiries at the police station the name of Maurice Kirk was mentioned, and also the fact that he might be a vet. He states that he remembers another police officer being sent back to the veterinary practice at Grand Avenue to make further enquiries but they were unfruitful.

**“female declined to give him any information”,  
“...make further enquiries but they were unfruitful”?  
Contacted Guernsey BEFORE interview?**

179. “On my arrival at the police station at 14:20 hours I informed the custody sergeant of the circumstances of Mr Kirk’s arrest. I told him that Kirk had been arrested under s 25 of the PACE and also that we had recovered a motorcycle which I suspected was stolen and could be connected with Kirk”.

180. As to Guernsey, “I was informed by the police on Guernsey that Kirk had left the island and was now believed to be living in the Avon and Somerset area”; his enquiries of Avon and Somerset Police “were not successful in identifying” Mr Kirk. Because enquiries were protracted, it was not until late that evening that he interviewed Mr Kirk.

## **Liar**

181. PC Thomas charged Mr Kirk at 1:40am with the offence of assault. The bundle in fact contains Statement of Charges against Mr Kirk of (i) assault on a police constable with intent to resist arrest (ii) having with him at Grand Avenue an offensive weapon being a garrotte type instrument and (iii) failing to give his name and address when required by a police officer who reasonably believed him to have committed a motoring offence (A1/1.254 to 256). The magistrates’ court record of that date records the alleged offences as simply assault police/offensive weapon (A1/1.257).

**All possible allegations, to obtain the Appellant’s custody, had now been checked out as groundless so a charges of both ‘assault’ and ‘resting arrest’ were quickly dreamed up by senior management knowing it was usual their ‘bread and butter’ and a winner for enhancing promotion while no independent witness was about to confirm it otherwise**

182. PC Beer gave a witness statement of 11<sup>th</sup> June 2004 which essentially mirrors the account of PC Thomas as to the motorcycle, the panniers, the approach by PC Thomas to Mr Kirk who made off away in a way he regarded as suspicious; that he could hear PC Thomas requesting Mr Kirk to stop because he wanted to speak to him; also that during this time Mr Kirk was not running but kept changing direction, and that he then saw PC Thomas struggling with Mr Kirk. “I cannot state that Mr Kirk was struggling violently, rather I recall he was just resisting our attempts to communicate with him or detain him and had become completely awkward and non compliant”. He regarded the whole incident as arising solely as a result of the behaviour/attitude of Mr Kirk, “He refused to speak to either PC Thomas or myself”. Mr Beer was not cross examined at length. He told me he played no part in the investigation of this incident, and PC Thomas was the officer in charge. In cross examination, asked whether he heard any of the conversation between Mr Kirk and PC Thomas before Mr Kirk was arrested, he answered No, I wasn’t close enough”. His brief pocket notebook entry is at A1/1.147.

183. In oral evidence, PC [now PS] Thomas told me that this incident was just after his second anniversary of joining the police, and therefore before he was confirmed in rank. He said he did not know Mr Kirk in the sense of recognising him, and had not heard of him. He further said that he at first thought the motorcycle was stolen, but was slightly wrong footed in that Mr Kirk did not present to him as a person likely to have a stolen vehicle, and he became less sure. In evidence in chief, he was asked about paragraph 18 of his witness statement where he had put as a report in direct speech “I am arresting you under section 25 of the Police and Criminal Evidence Act” and was asked what it is he had in mind. His answer was the vehicle document offences, specifically it would have been motor insurance, (also a vehicle licence offence), although it was pointed out to him

later, in management not disciplinary action, that this was not suitable for exercise of a power under s25 PACE). He said that it was the name and address which were to the forefront of his mind “an address was not furnished, which was suitable for a summons [to be served] “so those were the first two criteria” under s25. He also told me that he was firming up on a belief that Mr Kirk was linked with a veterinary practice, by persons at the scene, and that he thought that Mr Kirk “might be able to provide some easy explanation to the circumstances”.

184. There is every reason to think that PC Thomas on presenting Mr Kirk to the custody sergeant at the police station, did make reference to arrest under s25 PACE: (i) his notebook records “on being placed in van I said I’m arresting you under s25 PACE Act 1984” (A1/1.250); (he stated this in his witness statements of 10.3.1997 and 3.10.1997); (ii) the contemporaneous custody record includes “refused to speak. M/cycle 1876 possibly stolen. Arrested s25 PACE” (A1/1.211). (I heard evidence in the course of the case from a number of custody sergeants, each of whom stated that it was the practice contemporaneously to record what the arresting officer said, on presenting the arrested person to the custody suite, and like evidence was given by PS Huckfield in respect of this incident, which I have no reason to doubt).

185. Had PC Thomas, in fact, asked Mr Kirk for his name and address? Such a request is not recorded, either in the police notebook, (which is an entry running to 6 pages) or in the statement of March 1997, or in the statement of October 1997. In the witness statement additionally served of 6.2.2009 it is stated “on the evidence available to me at that time I was satisfied that I had reasonable suspicion to arrest the male in connection with the theft of the motorcycle. However as the male had refused to cooperate and had failed to provide me with his name or address, I decided to arrest him under s25 ....”; which may (at least as of February 2009) be implicitly stating that he had been requested to provide his name and address.

186. In examination in chief, leading counsel did not succeed in eliciting from Mr Thomas (the desired) express statement that he had asked the name and address at the scene, despite reference to s 25 PACE in the question. In cross examination, asked by Mr Kirk “When did you first ask me for my name and address?”, Mr Thomas replied, “I believe we had a conversation along these lines after you’d been placed in the back of the van, when I was asking for your cooperation, to the best of my recollection it was within a minute of you actually being handcuffed and placed in the van and I tried to explain to you the situation that you were in and the benefit to you of giving us some cooperation. “Q. If you had known my name and address before you arrested me what would you have done? A. We very likely would have sorted the matter out. You could have answered some simple questions and there wouldn’t have been the need to arrest you. Q. What would be the simple questions? A. Well we normally ask is this your vehicle, do you have a driving licence, if I’ve seen you driving it, or are you covered with motor insurance? Q. But you didn’t ask me these things did you? A. No because, because I didn’t get any cooperation at all, and that is all that I was seeking to do to get some cooperation. The vehicle was very suspicious..”.

187. The cross examination of PC Thomas by Mr Kirk was for some time deeply probing, and highly suspicious of his individual personal motive. On resuming cross examination next day, it was apparent that Mr Kirk had been impressed by Mr Thomas, and/or his

motivation as a former mental nurse that Mr Kirk might be mentally ill, and indeed he concluded his cross examination of Mr Thomas by saying that “Nobody else may believe you, but I do”.

**Exactly, but of which small portion of his evidence did the Appellant believe? PC Thomas believed it may be a stolen motorcycle and that was all.**

188. Mr Thomas was unequivocal that he arrested Mr Kirk under section 25 PACE. I am satisfied that he did not ask for a name and address prior to Mr Kirk being placed in the van. First, he does not say that he did. Second, Mr Kirk says that he did not. Mr Beer did not hear the conversation between Mr Kirk and PC Thomas. Third, the circumstances in themselves, in following, catching up with, and then sweeping Mr Kirk to the ground, make it less likely that he did. Did he ask Mr Kirk that afterwards at the scene? It is evident that PC Thomas was initially concerned that the motorcycle was stolen. PC Beer, although not the officer in charge of the case, in his own written and oral evidence does not speak to such a request of Mr Kirk, at the van, or prior to the police station arrival. His evidence mirrors the expressed interest of PC Thomas: “the whole incident arose solely as a result of the behaviour/attitude of Mr Kirk who refused to speak to either PC Thomas or myself. Once we attempted to try and ascertain *the history and ownership of the motorcycle* his behaviour was bizarre and totally unreasonable” (emphasis supplied).

189. There was in addition, to put it neutrally, an incomplete understanding on the part of the police officer of the effect of section 25 PACE. Mr Thomas was regarding Mr Kirk in interview as being under a burden of proof as to name and address; elsewhere in his written statement he said, and in his oral evidence told me, that he believed that it was ‘a criminal offence’ under s 25 PACE if a person failed to give name and address on request of a police officer, whereas s 25 simply confers a power of arrest. PC Thomas was an inexperienced officer at this time, as he himself conceded.

190. In the end, I conclude on the balance of probabilities that PC Thomas did ask Mr Kirk for his name and address at the scene, in the van, and did rely upon the failure to give that in order to arrest Mr Kirk, not on suspicion alone that the motor cycle was stolen. I do not do so on the simplistic basis that Mr Kirk now accepts the honesty of PC Thomas, since the material above calls for analysis. I do so because PC Thomas by then had felt uncertainty from the presentation of Mr Kirk that the vehicle was stolen; because he did contemporaneously tell the custody sergeant that Mr Kirk had been arrested under section 25 PACE (as recorded in his notebook); and because of the critical question and answer early in interview on the day itself, not disputed by Mr Kirk, “Q. Do you accept that you did not give your name and your address when requested to by this officer? A. Initially I did not” (A1/1.165).

**Evidence was the Appellant was in hand cuffs at scene of concocted ‘resist arrest’ allegation on the other side of the park, now examined by the Appellant and his son whilst looking for fresh witnesses and the fact that the ‘arrest’ was nowhere near the police van, parked right outside his veterinary surgery, with a cacophony of irate waiting clients surrounding it protesting of the brutality they had just witnessed on their veterinary surgeon.**

191. Earlier in cross examination, when still hostile to Mr Thomas, Mr Kirk suggested that before the interview he could go on the PNC and know full well who he Mr Kirk was; the

reply was “I believed I had. But it needed to be proven”. It was put that the persons in charge knew that Mr Kirk’s full name was Maurice John Kirk. The answer was “we asked you to confirm those details. You wouldn’t. I really didn’t want you to go to prison. You didn’t belong there. If you’d engaged in the process this would all have been sorted out”.

## Nonsense

192. The custody record, after its initial “after first noting surname refused, has the full name of Mr Kirk, Maurice John Kirk. Mr Thomas was asked, where did that come from, if not from Mr Kirk? He answered “it may have been from the letters in your possession”. A little while later, as to the wire with handles Mr Thomas said “all you needed to do was to say it’s an embryotomy wire and I was a vet.... it’s not a question of what I believe, I did believe it was you, it’s what we can prove. It was to get you to prove you were. And I was seeking to get you to prove that you were Maurice Kirk. You could have told us your name and address”.
193. For completeness, I record that as to enquiry of the police in Guernsey Mr Thomas said he believed that Mr Kirk was well known in the Channel Islands, the person to whom they spoke in Guernsey immediately recognising his name.
194. The custody record records brief grounds for arrest which do not include ‘assault’, or ‘possession of an offensive weapon’. (The custody record states that on being questioned Mr Kirk “ran” away. Mr Thomas confirmed expressly that Mr Kirk did not run from the scene, “I didn’t give you the opportunity to run away when I believed you were about to run away”).
195. However there are other entries which are germane. Mr Thomas was asked about the entry in his notebook which indicates that he conferred with “03” a senior officer and notified his injuries. This was a senior officer, the Inspector, or Acting Inspector, “03”.
196. He thought it reasonable to assume that he had given that officer some explanation, although he did not recall the conversation. At this time he suspected that Mr Kirk was a vet and would have shared with that officer whatever information he himself had. Asked about the documents which Mr Kirk had on him when searched, he answered “I went through those *and I used them to establish your identification*” (emphasis supplied). I have set them out in this judgment above, including the letter addressed to M J Kirk 51 Tynwydd Road, Barry.
197. Having referred to each of these, Mr Kirk asked Mr Thomas in cross-examination whether the content of his pockets suggested that he might be that person. The answer was “*Absolutely. I had a strong belief that that person was you*” (emphasis supplied). He caused a police officer to go to that address, by request via command and control. The answer that he was given was that they had got no reply at 51 Tynwydd Road, Barry and that this would have been the Barry unit which attended. This chimes with the answer, slightly later, that “you were legally advised to cooperate, you wouldn’t. To do this simple thing, to satisfy the burden of proof. .... *We had a strong belief you were Mr Kirk of that address* [during interview, emphasis supplied]”. The custody record, after the initial record as to surname of “Refused”, has “Kirk, Maurice John [disclosed in interview]”. Asked where that came from, if not from Mr Kirk, Mr Thomas replied that it may have been from the letters in Mr Kirk’s possession, but the only name appearing on

that letter is “M J Kirk”. Mr Thomas told me he knew nothing of a police officer looking into Mr Kirk’s cell and identifying him by name.

198. In my judgment, nothing described by PC Thomas or PC Beer at the scene in their witness statements or oral evidence amounted to, or could amount to, an assault on PC Thomas. Unless PC Thomas had given some different account to other police officers at the police station, what he related to them did not amount to evidence which would in fact support a conviction for assault. The brief grounds for arrest recorded by PS Huckfield on presentation of Mr Kirk to him as custody Sergeant simply record “was apprehended... and struggled”. There is no suggestion that he was arrested for assault – or indeed possession of an offensive weapon. DC Griffiths, who jointly interviewed Mr Kirk, confirmed that if he had been told by PC Thomas that Mr Kirk was arrested for assault he would have referred to it, stating that when he conducted an interview he would be quite formal, so his feeling was that he would have said that Mr Kirk had been arrested for the other offences (which he did not). Notwithstanding this, when in interview Mr Kirk said that he was injured, PC Thomas identified his own injury and said he intended to charge Mr Kirk with assaulting him. I have found it difficult to follow why PC Thomas said this to Mr Kirk. My inference is that some other officer (whether the fellow interviewing officer or another such as the Acting Inspector “03” to whom he notified his injuries) must on being told of injury to him expressed the view to PC Thomas that he should consider a charge of assault.
199. As I have related, the interview at 22:55 hours was conducted by both PC Thomas and DC 2784 David Griffiths, principally by the latter. He was a detective constable stationed at Fairwater Police Station. He said that he had played no part in the enquiry that afternoon flowing from the arrest, but would have been asked to give a hand to the younger officer. It seems likely to me that he was not involved in the enquiries prior to interview, (i) by reason of the internal evidence of the interview and (ii) in that he told me that he was responsible for a large part of Cardiff, under the 6.00pm to 2.00am shift, so he could not imagine getting too involved with this investigation, which is consistent with the contemporaneous entries and which I find persuasive.
200. His witness statement described Mr Kirk as awkward and belligerent during the interview with his attitude and actions unnecessarily prolonging the matter (A1/1.155 paragraph 5]. In due course, Mr Thomas was to tell me that during the interview Mr Kirk was “obviously very upset and wounded”. DC Griffiths described the record of interview before me as ‘neither a full transcript nor a summary’.
201. Mr Griffiths confirmed that Mr Kirk, in order to attend interview, would have come from the cells on a route which took him past the custody sergeant and a desk. Asked whether he saw a small piece of paper at the custody desk with Mr Kirk’s name and address and written on it “this man extremely violent” he said that he could not remember any piece of paper, and did not see one, “at least I don’t recall seeing one”. It is clear from the record of interview that Mr Kirk repeatedly insisted that there was such a piece of paper at the custody desk, with his details on it. Mr Griffiths told me that he could not recall going to look at it and he certainly did not suspend the interview in order to do so. Once interview was complete, he said that it was not within his knowledge why Mr Kirk was detained further.

202. He agreed that since there was reference in interview to contact with the Guernsey Police, he must have been told of that by PC Thomas. As to the instrument with piece of wire between handles he was asked what got him so interested in it and replied “my thought processes were more an offensive weapon.... “made intended or redacted”? ...I was just curious”, (presumably ‘made intended or redacted’ is a reference to the definition of offensive weapon under s1 Prevention of Crime Act 1953). Save for what he was able to read out in the record of interview, I was not persuaded that Mr Griffiths had much recollection of this interview, or even, much recollection of Mr Kirk.
203. The interview is intensely frustrating to read, because it is plain from what I know and from its own record that Mr Kirk did believe that he had been set up, that the interviewing officers knew who he was, and that there was a piece of paper already at the custody desk with his name on it; while equally the police officers were adamant on extracting from Mr Kirk an explicit statement of his name and address. In cross examination, Mr Kirk asked Mr Griffiths, “You left the interview not knowing who I was?”. His answer was “Yes”, but I think it likely that he was of a like frame of mind to Mr Thomas, who told me in his own evidence that he had a strong belief who Mr Kirk was, but did not have the evidence to establish it.
204. The custody sergeant who received Mr Kirk into custody was PS Huckfield (retired 1999), who in oral evidence emphasised the refusal of Mr Kirk to speak. (The custody record, at the end of presentation, reads “refused to speak at all”). Further entries as to refusal to speak appear by his assisting officer PC Donovan and himself at 16:50, 17:50 and 19:00 hours. Perhaps critically, on first presentation Mr Huckfield was “satisfied that the male’s detention was necessary in order to obtain evidence by questioning. I therefore authorised the male’s detention to obtain evidence by questioning” [witness statement para 6 A1/1.218 at 219]. In that statement he said at no time during his dealing with “the male” did the male inform him of his name or address. He had no memory of the documents on Mr Kirk, but said that if the documents had included name and address, “it would still have been necessary for those details to have been verified as the prisoner’s”, and told me orally that the responsibility for doing so would be not his, but the arresting officer’s.
205. His stance as to documents, including the 3 cheques made out to the Animal Health Centre, was that the task of the custody desk was only to book the property into the bag, and to secure it. He declined any knowledge that Mr Kirk had, before his arrest been speaking to the Inspector Trigg whom Mr Kirk asked to be informed, (as entered on the custody record at 20:18 hours). Curiously, when asked whether he did not hear Mr Kirk’s name he said “I saw documents which had your name, certainly finding documents on you with a name would indicate that that was your name”. His description of his duties, and his apparent perception of his role, (once satisfied in his own mind that detention was required for questioning), was principally one of ensuring that the prisoner was secure and safe. He authorised detention at 14:20 to obtain evidence by questioning and under s25 PACE. The brief grounds for arrest did not identify assault or possession of an offensive weapon; they did refer to the motorcycle being possibly stolen. Mr Huckfield told me that he had not met Mr Kirk prior to this, or had dealings with him, or heard of him. There is nothing internally in the evidence to cast doubt on this, and I note that Mr Huckfield remarked later in his evidence that at that time, detainees at this station were running at the rate of 6,000 or 6,500 prisoners a year. Asked by Mr Kirk whether he had

picked up gossip that Mr Kirk was a vet with a practice in Ely he replied later, much later, he learned that Mr Kirk had a surgery in the Vale. The overwhelming impression is that admitting detainees to custody was a routine if not mechanistic process for the custody Sergeant, further enquiry or investigation being very clearly regarded as being for the arresting officer or officer in charge.

206. PS Huckfield went off duty at 10.00pm, Mr Kirk's detention having been reviewed by Acting Inspector 594 Crutcher. I have related, at paragraph 98 above, the entry made in the custody record at 2100 hours by Mr Crutcher. On the day in question he was working at Fairwater Police Station (witness statement 25 May 2000 A1/1.225 at 226). The witness statement is short and plainly derived from the written custody record. The recollection in the witness statement is in error, in referring to probable attendance at Ely Police Station (partially corrected in the witness statement itself). Orally, he thought he might have attended from a different police station, since he was Acting Supervising Inspector for more than one station, and the review should be carried out at 6 hours. If carrying out a review as an Inspector, he said that he was not normally allowed to play a part in the investigating of the offences although he had little if any recollection now of dealing with Mr Kirk that night. He had himself before retirement been a custody sergeant. He recollected s25 PACE as applying where the police were unable, for various reasons, to effect service of a summons and the obvious example was of someone likely to abscond, or where the police did not know his details.

**No telephone call was ever made to the practice with well published telephone number that afternoon or night or was there any visit made to the Appellant's main veterinary surgery just around the corner of Barry police station.**

**The Barry practice would have been open with a full complement of staff until at least 19.30 hrs before switching to an alternative reception number manned 24/7, as a BT emergency line, with Mr Kirk on 'first call' as he nearly always was, at night, until the police had managed to have him 'struck off' on 29<sup>th</sup> May 2002 on spurious allegations.**

207. He said that "as a general rule [I] would authorise detention to effect details for service of a summons and you continually review that". In his own review, he assumed that the information raising question whether there was lawful possession of the BMW motorcycle came from the officer dealing with Mr Kirk at the time, and that as to evidence being obtained by questioning, this would again be by the investigating officer. (The first ground of detention was, according to that entry, for further enquiries as to whether Mr Kirk was in lawful possession of the motorcycle; the second, for further questioning to prove or disprove his involvement [sic]). As to the third ground, namely for further enquiries to establish his identity, he said that it would not be the role of the reviewing Inspector to investigate identity, as opposed to the investigating officer. He explained that "03" (as in PC Thomas' notebook entry) was likely to refer to the Inspector's radio call sign, and therefore related to a rank, rather than an individual police officer, and normally only the shift Inspector. I infer therefore that on this occasion it was Mr Crutcher himself who was "03" and to whom PC Thomas at some stage spoke.

208. Asked by Mr Kirk whether he understood at the time that there was a warrant for his arrest in Guernsey, Mr Crutcher said he did not. He said that he found out about this, "probably a day or two later, probably from the officer in the case, probably a few days later". There was in fact a warrant out for Mr Kirk's arrest in Guernsey, as was discovered by a woman police officer in a quite different incident, but there was no

suggestion by PC Thomas during the interview with Mr Kirk later that night that Mr Kirk was subject to such a warrant, and Mr Thomas did not mention becoming aware of this in his oral evidence. As this court knows, PC Thomas developed a strong belief that Mr Kirk was not likely to have stolen the motorcycle. Mr Crutcher told me that he did not know that at the time, and was not told that. Mr Kirk put it to him that he was lying about this, as he was lying about purported ignorance of the warrant for Mr Kirk's arrest in Guernsey.

209. However Mr Crutcher remained clear in his evidence that throughout the review, Mr Kirk was sat with his head dropped forward, and did not utter a word. I note this was not contested by Mr Kirk during his cross examination of Mr Crutcher, or in his own oral evidence: Mr Kirk said that 'he could not deny or confirm this'; he agreed that generally, in custody at the police station, he said very little. I consider it likely that he did not say anything at all to Mr Crutcher at the time of this review. I note that Mr Thomas told me that when he spoke with "03" the Inspector was more concerned with the injuries to Mr Thomas, and I note that no mention was made of injury to the police officer, or purported assault, yet on presenting him to the custody sergeant at 14:20pm, by the time of interview (an hour and three quarters after the 9.00pm review) Mr Thomas was speaking of an intention to charge Mr Kirk with assault. It seems highly likely to me that an assertive view was taken by other police officers compared to that taken by PC Thomas himself. I conclude that on the strong balance of probabilities, Mr Kirk did not give information to, or make representations to, Acting Chief Inspector Crutcher that evening.

210. The custody sergeant who took over from Mr Huckfield was PS 1846 Brown. The custody record shows his entry of a visit at 01:10 hours and at 01:40 "prisoner charged and cautioned. No reply" and "processed and returned to cell. Review: Detention authorised and considered necessary as the accused persistently refused to provide details of home address and it is believed that if granted bail he will fail to appear". Solicitor aware – no representations". Given that the solicitor, in interview, is recorded as saying "Mr Kirk – all you're doing is prolonging your detention", this rings true.

211. I heard evidence that the charging decision would generally be by the custody sergeant, and the officer in charge would then put the charges. Here, Mr Thomas told me the decision was for the custody sergeant, whoever that was, when the charges were put, and therefore it would have been the second custody sergeant that evening. However he told me, without seeking to blame DC Griffiths, that in recommending the charges he sought advice from DC Griffiths, who would have been very influential as to what the charges were.

212. As to continued detention, PS Brown made the entries in the custody record of 20.45, 21.45, 01.10, and 01.40 (the latter being "Processed" meaning fingerprinted and photographed). He was asked in chief about his entry "Detention authorised and considered", and said that it was "only that the accused had not provided details which could be verified of his name and address, so my decision must have been to put him before the court". "Q. What if a prisoner, not known to you, has not given his name and address, would you grant them bail? A. No." What if he gives his name but has not given his address? His approach was, "I would not give bail, with a view to the prisoner being put before the next available court". In cross-examination he said that the fact of refusal of name and address would justify his recorded view that "if granted bail he will fail to appear" (A1/1.240). However he also stated that "The reason you were detained *was that*

*your identity could not be verified*” and that this was “*the only reason*” (emphasis supplied). He agreed that there was entered in the record “Maurice John Kirk, disclosed in interview”, but said “that’s all we had”. Shortly afterwards, he said that his entry (“believed he would not answer to his bail *A1/1.240 check*) was because at that time, “your identity may have been known, but your address was not known”. He could not now recall, but could only assume after Mr Kirk “had been charged, without a bona fide address,[he] would not be bailed”.

213. He could not recollect any connection with Guernsey. He had no recollection of a paper on the custody desk about Mr Kirk stating “Believed to be extremely violent”.

214. As to this piece of paper, Mr Kirk’s witness bundle (copied in the trial bundle at A1/1,260) includes a page of reference to this piece of paper having been seen by two other young persons, as I understand it also then in custody, signed in their names, a Mr Powell and a Mr [indecipherable]. There was no witness statement as such from either of them. In case management before trial, over a considerable period, I had drawn attention to the need to have proper witness statements from, and the attendance of, witnesses whose evidence was not accepted by the opposing party. Mr Kirk told me that his efforts to trace and call these two persons as witnesses had been unsuccessful. Such may be unsurprising, 20 years on from the events in question. However in the absence of the witness being present to be questioned and observed the weight to be placed on the evidence of a witness who does not give oral evidence is likely to be modest, even where there is (unlike the case here) a full and proper witness statement and it is proffered under the Civil Evidence Act. Also there is little to explain why other persons in custody should notice and remember such a piece of paper, when they were not - as I understand it - then known personally to Mr Kirk. I therefore cannot place significant reliance upon this piece of paper.

215. Mr Kirk’s case is also that one police officer was heard to say that his uncle had a farm, and he the policeman had seen equipment such as found in the pannier of the motorcycle, “used by vets to cut up dead calves within the womb of the cow”. In his witness statement of 19 June 2009 Mr Kirk says that at the police station he saw and heard one police officer say this.

216. After he had concluded his oral evidence, Mr Kirk unearthed a witness statement from 08 August 2000, which he told me he had given to his solicitors at the time. In that statement he describes the matter slightly differently “one police officer, the son of a farmer, identified the embryotomy wire found by the police in my motorcycle pannier with bottles of local anaesthetic and antibiotics to be a cutting wire used by veterinary surgeons to dehorn cattle” – and the time of the officer doing so is not identified.

217. When this implement was raised in the police interview Mr Kirk was deeply sarcastic [see above]. It is in theory possible that he thought this was sufficient, and/ or he was so consumed by sarcasm that he neglected to say that he had heard a police officer identify the implement for what it was; but the interview is full of combative reference to what the police interviewers could themselves ascertain, and if another police officer had identified it as an embryotomy wire prior to interview, then looking at the interview as a whole it seems inevitable to me that Mr Kirk would have referred to it and done so forcefully. When I asked Mr Kirk whether this had been said at the scene at Grand Avenue, or at the police station, he was uncertain. If such a remark was made by any police officer, I do not

consider, having considered PC Thomas' evidence, that it was said to PC Thomas at any stage prior to the decision to charge Mr Kirk, apparently about 01:40 hours on 21 May 1993. This is important in the light of the law that it is what is known to or in the mind of the individual officer which is crucial.

218. For completeness, the Bundle of documents includes a note, and it is only a note, dated about this time, 3.6.1993, "I heard the police officer say to some boys that they should shut the vet because there is too much trouble", with the name of Rachel Thomas and an address (A1/1.261). No witness statement was ever forthcoming from Ms Thomas. Mr Kirk made no reference to it during the trial (or afterwards). Accordingly I attach no weight to it.
219. As I have stated above, I cannot place reliance on the piece of paper signed by two youths as to having seen in the custody suite some piece of paper relating to Mr Kirk. However, there is clear contemporaneous evidence, in the record of interview, that Mr Kirk then believed he had seen a piece of paper on the custody desk, with his name on it and "Believed to be violent". His own inference was that this must have come from enquiry of the [Guernsey] police. The evidence before me is that enquiry was made of the Guernsey police on this afternoon or night. In another incident a police officer was given information by Guernsey police that there was a warrant extant for the arrest of Mr Kirk; and a record of his convictions from Guernsey police was later in the same year available to PS Booker (see the incident of 3 October 1993 which I consider below). At one point that record was within the hands of the South Wales Police (since it was annexed to a letter of PS Booker) but it is not made available to me now. It is not implausible that it might have been the source of some note about Mr Kirk held at the custody desk on the evening of 20 May 1993.
220. The closing submissions for Mr Kirk on this incident are spare, occupying only one page and making four points only: (i) the terms of the pleadings were that PC Thomas' suspicions of theft reduced and yet Mr Kirk was arrested to allow his identity to be established; (ii) that later he was admonished for dealing with the matter under section 25 PACE; (iii) that the educated accent of the Claimant and the surrounding circumstances (unspecified) "were all clues that the suspect was a vet"; and (iv) that the police admitted on oath "that they had telephoned Guernsey and obtained details of the Claimant's purchase of the motor cycle".
221. The last point mistakenly conflates the evidence given. There was evidence that PC Thomas had seen that the expired licence on the motorcycle was a Guernsey one and made enquiries later with the Guernsey Police; and that "I was informed by the police on Guernsey that Kirk had left the island and was now believed to be living in the Avon and Somerset area", although his enquiries of Avon and Somerset Police were not successful in identifying Mr Kirk. There was no evidence that Guernsey Police gave or confirmed details of a purchase of the motor cycle by Mr Kirk.
222. "Clues" that the suspect was a vet would not identify his name and address. A reduction of suspicions of theft would not in law have deprived the police officer of a power of arrest in his discretion given the low threshold of reasonable suspicion which the law requires.
223. In my judgment these submissions only touch upon the detailed and rigorous consideration of what happened at each stage of Mr Kirk's arrest and detention which is

required in order fairly to consider his claim. Hence the elaborate analysis of the evidence which I have set out above.

224. Having so analysed the evidence I make the following findings of fact.

- (i) PC Thomas was the arresting officer. He did not know Mr Kirk prior to the arrest and the arrest was not motivated by anything other than what he observed at the scene.
- (ii) There is no evidence of any other police officer having asked or prompted PC Thomas to question or arrest Mr Kirk.
- (iii) To PC Thomas, who will have known nothing of Mr Kirk's suspicions of or hostility to what he considered police harassment, Mr Kirk's behaviour when noticed by PC Thomas must have appeared bizarre.
- (iv) PC Thomas considered that the motor cycle may have been stolen and that the behaviour of Mr Kirk raised in PC Thomas a suspicion that Mr Kirk was involved with the motor cycle and any possible stealing of it, as well as suspicion of whether Mr Kirk was mentally unwell.
- (v) PC Thomas did not ask Mr Kirk for a name and address prior to Mr Kirk being placed in the van (see above).
- (vi) PC Thomas did ask Mr Kirk for his name and address at the scene, in the van, which Mr Kirk did not give, and PC Thomas did rely upon the failure to give that in order to arrest Mr Kirk (see above).
- (vii) There was nothing done by Mr Kirk at the scene which amounted to, or could reasonably be thought to amount to, an unlawful assault. Any possibility of assault was not then considered by PC Thomas and played no part in his decision to arrest Mr Kirk.

**The Appellant also humbly submits that the unlawful assault was on him only, that took him to the ground by several police on top of him to put the hand cuffs on.**

- (viii) On arrival at the police station, and thereafter, Mr Kirk did not give a name or address to the first or the succeeding custody sergeant or other custody police officers or Acting Inspector Crutcher who reviewed his detention at 2100 hours (see paragraph 208 above).
- (ix) Prior to arrival at the police station, PC Thomas did not know the name or address of Mr Kirk.
- (x) At the police station, there were letters on Mr Kirk which gave his name and an address, which were actively considered by PC Thomas.
- (xi) By the time of interview at latest, and probably much earlier, PC Thomas believed that he was dealing with Maurice James Kirk, whose name appeared on letters found on Mr Kirk and whose name and date of birth appear in the PNC print-out of 16.17 hours that afternoon.

- (xii) On the balance of probabilities, at some point in the afternoon some police officer unknown did pass the cell where Mr Kirk was detained and refer to Mr Kirk by name, as Mr Kirk says.
- (xiii) Mr Kirk did not give, and by the time of interview had not given to PC Thomas himself, an address, doubtless in the perception that his address was already known to, and he that he was being targeted and harassed by, PC Thomas.
- (xiv) Part of Mr Kirk's complaint is that it was absurd to consider an embriotomy wire a possible weapon. The wire was found only after arrest. It was not part of the reason for initial, or later detention. Thus whether or not Mr Kirk be right, the wire was not a ground of claim for any unlawfulness of detention. However if it were unacceptable to accept DC Griffiths' stated belief that it might be an offensive weapon such would o could go to the issue of police credibility or bona fides. Mr Kirk's memory for detail is erratic or absent; I can find only that at some stage he overheard a police officer correctly identifying the embriotomy wire as what was used with animals, but there is no evidence to establish when this was said, and none that this was communicated to PC Thomas or any police officer who considered Mr Kirk's continuing detention.

**PC Thomas, the Appellant believes, identified the embriotomy wire even before the he was even put in the police van or Panda car.**

- (xv) Further it may be obvious to a veterinary surgeon that such a wire is a tool of the vet's trade, but in my judgment such is not a matter of everyday knowledge to those other than vets or farmers. The apprehension (of Mr Griffiths in particular) that such a small length of wire might be a weapon is to say the least unimaginative (or conceivably excitable) but hindsight is precious and at the time there was no information or explanation from Mr Kirk, as there could so easily have been, to put the matter to rest.
- (xvi) PC Thomas did make enquiries during the afternoon and evening whether the Tynewydd address stated on Mr Kirk's documents could be independently verified as Mr Kirk's but such positive independent verification was not achieved.
- (xvii) Notwithstanding this, PC Thomas formed the belief on seeing the documents found on Mr Kirk that the arrested person was Maurice John Kirk; and formed the strong belief by the end of interview that Mr Kirk was of the name and address stated in those documents (see paragraph 196 above).
- (xviii) There was a piece of paper on the desk but not with Mr Kirk's address.

225. I have found (some of) the application of the law to these findings of fact not straightforward.

226. 'Unlawful arrest'. However, (like Mr Kirk), I fully accept the honesty of Mr Thomas' evidence and he was a careful witness. He told me that as to the initial arrest, his suspicions of stolen vehicle were diminishing but the motorcycle appeared not to be

properly taxed and he had suspicion whether it had valid insurance, “I sought to deal with Mr Kirk by investigating a summons only offence of no insurance, he wouldn’t communicate with me so I wasn’t aware, I wasn’t able to evidence to a court his identity and name and address for service of the summons”. Accordingly, as to the initial arrest, it was lawful, the requirements of section 25 PACE being satisfied at that time. On balance I consider that the conduct of Mr Kirk up to the point of being asked name and address in the van indicated a refusal to answer any question.

227. It is ironic that at the scene, after arrest of Mr Kirk, the officer tried to make enquiries at the veterinary surgery but was rebuffed by the blonde lady there (probably, it transpired in Mr Kirk’s evidence, Kirstie Kirk later to become his wife). Doubtless Mr Kirk had warned others at the surgery not to co-operate with the police, whom he by then thoroughly distrusted.
228. ‘Unlawful detention’. The detention up to conclusion of interview and charge was consequent upon lawful arrest and based on absence of address. There was no corrupting element in the mind of PC Thomas; and doubtless Mr Kirk does not now pursue unlawful arrest against PC Thomas (see above).
229. Mr Kirk had been identified by full name and date of birth at 16.17 that afternoon (see above). Mr Thomas believed Mr Kirk was of the address on the letters. However, on any evidence before the court, this belief was not communicated to the custody sergeants. There was review by Acting Inspector Crutcher but Mr Kirk refused to say anything to him. The detaining custody sergeant(s) went by Mr Kirk’s refusal to engage or co-operate in any way.
230. In deciding to continue detention the attitude of the custody sergeant(s) appears to me to have been lamentably unimaginative and mechanistic. It would have been helpful, and to any intelligent and alert police officer desirable, to look at the detained person’s belongings in case the address could be ascertained rather than continue to detain on grounds that the address was not known. If there were in law an actionable duty of care based on simple negligence, in respect of whether to detain, I consider that the custody sergeants would have failed it, but there is not. It is equally lamentable that Mr Kirk should have continued to be detained, despite his hostile silence on his address, when prior to decision of the custody sergeant to continue to detain the arresting officer had formed the strong belief that Mr Kirk was of the name and address stated in the documents upon him. If in law I were entitled to aggregate his belief, or the document of 16.17, with that which was known to the custody sergeant I would gladly do so. I consider that it is not open to me as a matter of law to aggregate the knowledge or belief of Mr Thomas, or whoever else may have seen the document, with that of the custody officers to conclude that continuing detention on section 25 PACE grounds was unlawful.
231. I have considered whether a remedy is available to Mr Kirk on the grounds of *Wednesbury* unreasonableness. If he had, for example, said, “My address is the one on the letters!”, I might be able conscientiously to find in his favour. He did not. He remained silent and hostile. The law does not entitle me to aggregate knowledge which no individual police officer responsible for his detention individually had. It may be that in order to cater for circumstances such as these, the law should be different. With some regret, I consider that it is not open to me to depart from it and I am driven to the conclusion that in law Mr Kirk’s claim in respect of the detention until appearance at the magistrates’ court the next morning fails.

232. Malicious prosecution. The charges which were laid, and at least initially pursued, included that of assault to resist arrest and possession of the garrotte (as an offensive weapon).
233. As to any supposed assault to resist arrest, nothing described by either officer at the scene in their witness statements or oral evidence did amount to, or in my judgment could amount to, an assault on PC Thomas (see above). “The authorities make it clear that the burden on a Claimant is a heavy one, not easily discharged”, (closing submissions for the Defendant), but I find that in instituting a prosecution for this offence Mr Kirk has shown on the balance of probability that the Defendant acted without objectively reasonable and probable cause.
234. However it is also required that a Claimant show that the Defendant acted maliciously. Self-evidently, if one accepts that Mr Thomas is to be believed (as did Mr Kirk himself in congratulating PC Thomas as he left the witness box), he acted honestly at all times and malice is not established on his part. (Insofar as concerns the custody sergeant, whose role may be important in whether charges are preferred, or DC Griffiths (insofar as he contributed to discussion or influenced whether to charge), I am not satisfied that the evidence begins to establish malice on their part).
235. As to prosecution for possession of an offensive weapon, if it were known to those charging Mr Kirk that this is an embriotomy wire such as veterinary surgeons use, then to charge him with such an offence for having it in his possession would be wholly unsustainable (and doubtless malicious). In this case Mr Kirk, when asked about it, did not do the one thing which he could and should objectively and usefully have done, namely tell the police “I am veterinary surgeon. That is an embriotomy wire. It is used for xyz. Look it up if you want to”. He was so outraged by what he thought was PC Thomas (with DC Griffiths) setting out to try to trick or frame him that he did not do so. I am unable to tell (see above) when or whom the anonymous more practically knowledgeable police officer said anything to others about what he thought the embriotomy wire was. In my judgment exactly the same conclusions follow, in respect of prosecution of Mr Kirk for this offence, as for that of unlawful arrest: proof on the balance of probabilities that there was want of objectively reasonable and probable cause to prosecute but equally want of proof on the balance of probabilities of malice.
236. The pleaded claim alleges, in a single sentence, that Mr Kirk’s motor cycle was seized and damaged and the police refused to release it to him for several days after his release from custody. It was suggested in one witness statement by Mr Kirk that another person, (a Mr Powell), had seen the damage; but there is no direct evidence of damage whether from Mr Kirk or otherwise, there was no witness statement from Mr Powell and he was not called to give evidence, and Mr Kirk did not pursue this aspect of the case at trial.
237. Accordingly I do not consider this aspect further.
238. Lastly, I have considered whether the existence of the 16.17 document establishes or supports Mr Kirk’s overarching case of conspiracy. I do not discount this on the basis that at trial neither the Claimant nor the Defendant paid attention to it. However in the very full analysis of evidence above I have elaborately examined the actions belief and

motivation of the individual officers and my findings of fact do not support such an inference from this document, or from the facts more widely.