

IN THE CARDIFF COUNTY COURT

CASE NO.BS 614159-MC65

CF101741

CF204141

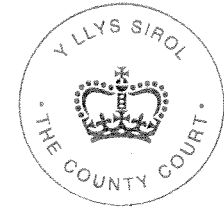
BETWEEN:

MAURICE JOHN KIRK

Claimant

and

THE CHIEF CONSTABLE OF SOUTH WALES POLICE



Defendant

ORDER

Upon the court explaining the reasons for the present order in a Note of Reasons annexed to the order

And upon hearing the Claimant and Leading Counsel for the Defendant on 4 November 2016;

IT IS ORDERED THAT

1. Audio Forensic Services (whose contact details are to be derived via <http://audioforensicservices.com>) shall be instructed to examine and to report on the audio tape handed in to court on 15 April 2016 in accordance with the letter of instruction approved by His Honour Judge Seys Llewellyn QC which is annexed to this Order; and the tape shall be forwarded by the court direct to Audio Forensic Services and not via the Defendant or the Claimant.

NOTE OF REASONS:

1. The judgment which I handed down in these actions included judgment on the claim based on arrest at Grand Avenue Cardiff on 20 May 1993 and detention thereafter.
2. In the late evening of his arrest, Mr Kirk was interviewed under caution. At trial I had a copy of a written summary of the interview made by the police but not a transcript of the interview. A tape of the interview was discovered following judgment. Leading counsel informed the court of this and recognised the potential importance of it, since what was said at interview was controversial and potentially of importance: see my written judgment in these actions.
3. At the hearing of 15 April 2016 the tape was brought to court. I gave directions that day for the court to retain the tape and for affidavits to be served on behalf of the Defendant stating the circumstances of finding the tape, and such information as was known about it.
4. I also ordered on that date that

By 4pm on 29 April 2016 the parties must write to the Court setting out their proposals as to how the cassette tape shall be dealt with, and in particular what investigation playing or transcription is proposed and by whom;

and that:

By 4pm on 29 April 2016, the Claimant must file at Court a letter from his proposed expert whom he wished to examine the cassette tape setting out the following matters:

The nature and extent of their expertise and qualifications;
What examination they could carry out in relation to the cassette tape;
The time they would require to carry out such examination;
Whether such investigation was or might be destructive of any part of the tape.

5. The Defendant complied with these directions, by the required date. Mr Kirk did not comply, at any date.
6. I considered the matter further at a hearing on 8 June 2016. Mr Kirk again argued that the tape belonged to him, as he had at the earlier hearing of April 2016.

7. My decision, and ruling, was in essence that (i) it was not known whether this tape is the one which was intended to be sent to Mr Kirk (leaving aside whether it would become his property only when sent to him); (ii) in any event as a matter of case management I was intent that the court should retain it until examination could be made by an expert independent of either party.
8. Accordingly I ordered that at the hearing of
 - a. Mr Kirk must by 4:00pm on 29 June 2016 notify the Defendant and the Court whether he objected to the audio expert nominated by the Defendant in their letter of 29 April 2016.
 - b. If Mr Kirk did object to the audio expert nominated by the Defendant, the parties must by 4:00pm on 6 July 2016, serve and file a list of no more than three of their preferred audio experts together with their CV's. Thereafter the court would identify the audio expert to be instructed by the court.
9. By order of the same date I ordered (as more fully set out in that order) that 29 June 2016
 - a. Mr Kirk and the Defendant should use their best endeavours to agree a letter of instruction to the audio expert, which should be filed at Court by 4:00pm on 29 June 2016.
 - b. The letter of instruction to the audio expert should require the expert to give an opinion upon the integrity of the tape (e.g. whether it has been edited or otherwise interfered with), and whether or not the tape is the master tape, the working copy of the master tape, or a copy of the master tape/working copy or Mr Kirk's copy; and to prepare and provide a full transcript of the contents of the audio tape and copies of the audio tape.
 - c. If the letter of instruction could not be agreed, the parties must each file at court by 4.00 pm on 29 June 2016 their respective proposed letter of instruction, and I would thereafter consider the matter on the papers (to be diarised for on or after 8 July 2016) and in default of agreement between the parties (i) identify the expert to be instructed and (ii) set out the terms of the letter of instruction to the expert.
10. The Defendant did file and serve that which was required of the Defendant, and did so by the time required. Mr Kirk did not. He had still not done so at the date of the next hearing in this matter on 4 November 2016.

11. Since the matter had slipped my attention, and notwithstanding the continuing non-compliance with earlier directions, on 4 November 2016 I gave one last chance for Mr Kirk to comply, setting a new date. Thus I directed that Mr Kirk must file at court and serve details of the name(s) and copy C.V.(s) of any proposed expert(s) to examine and transcribe the interview tape.
12. The totality of Mr Kirk's response has been to give orally, at the hearing on 4 November 2016, the name of (as I understand it) a woman officer or member of staff at a police station, to whom Mr Kirk says he had spoken. There is no name and address, no indication that this individual has expertise in the investigation or examination of tapes, and no CV.
13. Therefore I have selected an expert, who appears to be wholly independent; and I am satisfied that the terms of instruction proposed by those representing the Defendant in their draft letter are satisfactory.

3 December 2016

His Honour Judge Seys Llewellyn QC

