

**Action 2 paragraph 4 Link Road Barry 21.1.1997 stopped by PC Roch.**

Clearly yet another example of a targeted motorist, from previous 24/7 surveillance, causing the agenda, for who ever saw him first, to ensure, at least, an HORT 1 was issued so senior management could find the new insurance company's name to harass.

655. **Action 2 paragraph 4 Link Road Barry 21.1.1997 stopped by PC Roch.** It is common ground that on this date PC Roch stopped Mr Kirk as he was driving a Ford Orion, and that following this stop an information was laid against Mr Kirk alleging failure to wear a seat belt, that the vehicle had defective rear lights windscreen and bumper; driving without insurance and without MOT certificate; and that Mr Kirk had failed to produce his driving licence proof of insurance and proof of MOT certificate. The charge of failing to wear a seat belt was subsequently withdrawn. Mr Kirk was convicted on all other charges at the Magistrates Court at Bridgend but his appeal was allowed at Cardiff Crown Court.

656. The case, as pleaded, is that the prosecution was instituted and continued by police officers maliciously and without reasonable and probable cause in that (1) they knew that the Claimant's vehicle was not defective as alleged, and further knew that he had produced the relevant driving documents to the duty officer at Ely Police Station within 7 days; (2) there was no evidence that he had committed the offences with which he was charged and the police officers had no reasonable and probable cause for belief in his guilt.

657. The pleaded Defence was that PC Roch saw the Ford Orion being driven by a driver not wearing a seat belt, and so stopped the vehicle; but the police officer found on examination that the front windscreen had an 18 inch crack; the rear bumper was cracked and damaged and insecure and the rear offside indicator lamp was cracked and damaged; a vehicle defect rectification notice was issued (so that if defects were fixed within 14 days there would be no prosecution); an HORT was issued; and that on a date which the Defendant is unable to specify the Claimant's appeal was heard at the Crown Court "Police Constable Roch did not attend the trial in that matter".

658. The appeal was before myself sitting as a Recorder, with magistrates. PC Roch was present and gave evidence. He answered questions both from Mr Kirk and from myself. Having heard the evidence of PC Roch, I and the magistrates retired of our own initiative to consider matters which we found troubling in it. We allowed the appeal without calling on Mr Kirk to give evidence. The matter is reasonably vivid in my mind. There appeared to be discrepancy between the HORT form which had been given to Mr Kirk, and taken away by him, and that produced by PC Roch. I myself asked questions of PC Roch about this. I remember Mr Kirk's words, when I invited him to resume his own cross examination, namely "Well you seem to be doing alright, I think I'll leave it to you". Mr Kirk was visibly displeased to succeed on appeal without being called to give evidence, and left the court.

**Displeased alright, it had been obvious the police had fabricated all the allegations from the very start and that the Appellant had been targeted despite hoping to appear anonymous with his new car almost every month.**

- 1. The police knew, full well, from numerous similar incidents that had already occurred locally he had had medical dispensation not to wear a seat belt.**
- 2. The VDR notice served on the Appellant by PC Roch was promptly screwed up and was never acted upon kept quiet by the prosecution at both hearings.**
- 3. No 'rectifications' was ever needed to be done as confirmed by the subsequent police action. For the Appellant to admit his bumper had a 4 inch crack in it, his rear light lens had a 2-3 inch crack in it and windscreen had a crack part way across, where it was entirely legal, was not just confirmed by the Crown Court and this civil judge, presiding, indicates the lengths to which the local police were prepared to go to secure a prosecution.**
- 4. Another example of a fabricated HORT 1 by police desperate to obtain a conviction by whatever means**
- 5. As for obligatory production of proof of motoring insurance this was only to obtain information of the Appellant's new insurance company to harass them on the telephone. Persistent police telephoning respective head offices of insurance companies (see Mrs Kenyon evidence) had now caused the Appellant to seek and find, with not many companies left, the minimal statutory cover in order to practice veterinary surgery.**
- 6. Attempts to bury the truth of the appeal and who gave evidence for the police in both hearings was because the Appellant produced proof at the Crown Court of delivering his insurance cover note at Ely police station denied by the prosecution at the summary hearing (see clerk of the court's contemporaneous notes).**
- 7. The Appellant's deliberate refusal to produce the identity of the Appellant's current insurance company sometimes denied the police for up to six months in their enjoyment in to preventing him from freely being able to practice veterinary surgery and an income.**
- 8. Which judge is to further support an 'overarching view' of allegation of a 23 year running conspiracy if this learned civil trial judge does not recuse himself?**
- 9. Poor memory due to the passage of time is the very reason for grounds of appeal**

659. In case management hearings, and until a late stage of the hearing, Mr Kirk's recollection and belief was that it was His Honour Judge Gaskell who heard this appeal. As a matter of detail, following the appeal hearing I also dealt with (and refused) a request by Mr Kirk for a case to be stated in respect of the absence of order for costs (see A2/1.403 where I concluded, "In short, if the Applicant is willing to identify those matters in respect of which he does apply for a case to be stated, and to state the ground on which the decision is questioned, then I will reconsider his application."). Such was not in fact pursued by Mr Kirk. I mention this mistake as to the identity of the judge not out of any spirit of criticism, but by way of illustration that his memory for detail can be poor.

660. In his witness statement of 19 June 2009 Mr Kirk says that he was stopped in his car by PC Roch, "known to me" (para 637)." ,.. 641. At appeal the charges were quashed and the police officer was reprimanded by the fact that all defects on the car, relied upon by

the police, were not an offence. 642. Clearly I had produced my insurance at Ely Police Station, as the officer at Cowbridge Station had let slip in cross examination. 643. The policeman was also reprimanded for altering his HORT 1 traffic ticket after I had left the scene of the incident” (statement at Bundle A2/1.240B, A2/1.240C). Mr Kirk accuses the police, in the shape of PC Roch on this occasion, of stopping him because he was Mr Kirk and that this was in order to harass him and/or that he instigated a groundless prosecution.

661. PC Roch was at the time a uniformed police officer stationed at Cowbridge.
662. He said in oral evidence at the civil trial that he had known Mr Kirk for quite a number of years. I observe that at the Magistrates’ Court also, according to the notes of evidence taken by the Magistrates’ Court Clerk, Mr Roch agreed with Mr Kirk that he had known Mr Kirk within the town of Barry, and in respect of incidents where the police had been called to attend (A2/1.335).
663. Mr Roch told me that he did not know that it was Mr Kirk he had stopped on this occasion, before he alighted. PC Roch had joined the police service on 22 March 1993. There is no suggestion that he had only recently moved to Cowbridge. It is likely that once he saw Mr Kirk, he would have known and remembered him, since he remembered a number of incidents, including “something about a burned vehicle”, “something about decorating supplies”, some involvement with the tenants Stringer, Burn and Miss Miller, and that on one occasion he “possibly did” go to see Mr Kirk to ask whether he was satisfied with PC Roch’s follow up as to a victim of crime.
664. Further in oral evidence he said, “My personal belief is you do like to attract the attention of police. I understand you drove the wrong way around the roundabout. You wouldn’t do that if you did not want to attract attention. And driving a vehicle larger than life in defect. It’s only my personal opinion. Such as flying under the Severn Bridge. You’re quite famous with incidents around the town. You’ve been involved in a lot of stops by the police, and normally there’s been something unusual. Weaving past traffic”.
665. As to being reported for failing to wear a seat belt, the evidence of PC Roch was that Mr Kirk was not wearing a seat belt. In cross examination before me, Mr Kirk did not clearly remember whether he was. However the contemporaneous documentary evidence shows that after being stopped on this occasion he secured a letter/report from a consultant orthopaedic surgeon David H R Jenkins dated 23 January 1997 supportive of medical reason for him not to wear a seat belt by reason of rotator cuff disease in the right shoulder (Bundle A2/1.280). Much earlier than the date of this incident, it is clear that he was asking his own GP for a letter of dispensation from wearing a seat belt, (Dr McInerney 07.05.1996 at Bundle A2/1.276). The letter/report from Mr Jenkins was procured only two days after Mr Kirk was stopped. It thus seems to me likely, and I find as a matter of fact on the balance of probabilities, that Mr Kirk was not wearing a seat belt on the occasion when he was stopped by PC Roch.
666. In due course no evidence was offered at the Magistrates Court, doubtless because the letter of Mr Jenkins had been tendered by Mr Kirk. Mr Kirk was invited by letter of 16 October 1997 from the Clerk to the Justices at Bridgend Magistrates’ Court, (to which this case had been transferred because of what seems to have been an uproarious hearing at Barry Magistrates Court), to attend the hearing on 28 October 1997 with witnesses and

any relevant documentation, the letter stating that “clearly the legal onus is on yourself to bring documentation relating to the use of the vehicle and any medical exemption concerning the seat belt” (A2/1.314).

667. In these circumstances, and leaving aside the other charges, the charge of failing to wear a seat belt will have been reasonably believed to be proper until the medical evidence was produced to the police or the court, and a claim in malicious prosecution cannot succeed in respect of the seat belt charge.
668. In respect of the charge of failing to produce a relevant certificate of insurance and using a vehicle without an MOT certificate, Mr Kirk was in fact present at Barry Magistrates Court and pleaded guilty to each of the two offences (Bundle A2/1.260, 261). The certificate of insurance which Mr Kirk then had was in respect of vehicle F118 NTP. Indeed, at the hearing of the civil claim before me, when questioning PC Roch, Mr Kirk said to him “I make a point of not producing insurance”.
669. The notes of evidence at the original hearing, taken by the Magistrates’ Court Clerk, record Mr Roch as saying that he became aware from an officer at Ely that a person fitting Mr Kirk’s description had stuffed papers through the letterbox (“despite door being open”) but no date was given for this (A2/1.338 – 339). At the civil hearing before me, Mr Kirk asked Mr Roch in cross examination ‘why he did not tell the Court at Bridgend about this officer at Ely’. However as can be seen, according to the contemporaneous notes, Mr Roch did tell the court at Bridgend about this.
670. It is opaque, on the evidence before me, on what date Mr Kirk says he produced the documents at Ely. However the details of insurance cover in respect of this vehicle had to be established, in the same correspondence of 5 November 1997 as was produced at the appeal before HHJ Jacobs and was the subject of strong comment by the judge to which I refer above (see Bundle A2/1.199 and 330). I consider that, whilst Mr Kirk may have produced other documents at the police station, it is likely on the balance of probabilities (and on Mr Kirk’s own say so), that he did not produce a copy of the insurance documents at the proper time.
671. Here, the action of PC Roch at the scene had been to serve an HORT 1 form on Mr Kirk requiring him to produce his documents at a police station. He would then reasonably have suspected that a motoring offence had been committed (non wearing of a seat belt) in which case as to the charge of no insurance, to which Mr Kirk himself pleaded guilty in the magistrates’ court, the like comments apply in relation to insurance matters as I have made under Action 2 paragraph 3 above. This would be a routine police motoring matter. I am alert to any possible proper inference of illicit motive on the part of the police or PC Roch but in relation to this incident there is independent evidence of such a motive.
672. Further the evidence which I heard in respect of a number of incidents is that if an HORT 1 form was issued, an HORT 2 form was filled in at the police station where documents were presented; and the matter then went via the Administration Support Unit, and not to the individual police officer who had issued the HORT 1. I consider that this claim for malicious prosecution in respect of the charge of no insurance is unsustainable.

673. As to the initial stopping of this vehicle, I have Mr Kirk's own evidence that he used a variety of vehicles to avoid police attention. In due course, Mr Kirk conceded that there was a crack in the windscreen, that there may have been a cracked off side rear indicator, and that there was a cracked defective rear bumper which he "thought he had with bailer twine around it". In fact, when leading counsel put to Mr Kirk that there were three defects in the car, Mr Kirk's reply was "Only three?! But they were not unlawful". Mr Kirk did not put to Mr Roch any particular reason why he should have recognised Mr Kirk as the driver of this Ford Orion before he in fact stopped the car. Notwithstanding the matters to which I will turn, (as to the evidence which PC Roch gave in respect of the HORT 1 document), I consider that the reason why PC Roch initially stopped this vehicle was that it was a vehicle which did have obvious defects on it.
674. Given these features, I consider that subject to one point the direct evidence would lead me to conclude on the balance of probability that PC Roch's attention was drawn to a car which was not overall in good condition and to the fact the driver was wearing no seat belt. Mr Kirk put to him that he was desperately looking for something against Mr Kirk; Mr Roch's answer was "No. The car was asking me as a police officer". Mr Roch said he was "surprised and shocked" when he saw that it was Mr Kirk getting out of the vehicle. Whilst I consider that there was hyperbole in the word "shocked", this would not deflect me from such a balance of probabilities.
675. There remains, however, a most unfortunate feature to this stopping.
676. PC Roch wrote an HORT 1 form and gave it to Mr Kirk. The copy which he retained was different from that produced by Mr Kirk. Before me, he said that the HORT 1 form produced by Mr Kirk at the Crown Court appeal hearing was a photocopy only, and he raised a query whether Mr Kirk had himself altered it. "I pointed out the question was at what time the photocopy was made. I accused you at Barry Magistrates Court that you had made a copy to confuse the court..... You don't know how [the photocopy] was produced, when it was produced, or how it may have been altered".
677. Leading counsel, in cross examination of Mr Kirk, explored whether it was a photocopy which he produced, but did not put to Mr Kirk that he had in fact in any way falsified the document. I have had ample opportunity to observe Mr Kirk, both during his questioning of witnesses and while he was giving evidence himself. On occasions, Mr Kirk's memory is plainly faulty, or incomplete. On some occasions, within minutes of a witness giving an answer, Mr Kirk has completely misremembered the effect of it. On occasion Mr Kirk has appeared consciously unwilling to volunteer any detail or answer to a question. However on numerous occasions Mr Kirk was scrupulous to confine himself to what he believed he remembered, when it would have been easy for him to profess an answer more helpful to his case. I reject any notion that Mr Kirk in some way falsified a document put to the court at the appeal hearing.
678. PC Roch himself said in evidence that the front copy was a memorandum slip, and the rest "which is a section 9 document, I would have signed maybe later, but I would have submitted it then". On the appeal from the magistrates' court, the appeal court found the police officer's explanation for discrepancy between the two documents wholly unsatisfactory, and that it went to the root of whether the court should accept, in respect

of a number of defects which may very well have been present, the assessment made by the police officer that they were of such an extent or character to be properly classed as unlawful.

679. I consider it established on the balance of probability that this police officer added entry to the HORT form he had retained, after he had given a copy of it to Mr Kirk. To do so was either crass or improper.

680. I have considered whether this vitiates the subsequent prosecution as one tainted by improper motive. On the one hand I note that at the time he took an adverse view of Mr Kirk, stating to Mr Kirk, who had given his date of birth as 12345 “I must advise you that it is an offence to provide false details, you are obstructing a police officer in the course of his duties” and on repeated “12345” telling Mr Kirk “you are being reported for obstructing a police officer in the course of his duties, failing to supply your date of birth upon request. You are also being reported for having an expired tax disc and for not wearing a seat belt” (A2/1.24).

681. On the other hand, I am satisfied that there were defects present on the vehicle, not least since Mr Kirk accepted that the three defects noted by PC Roch were present. I should note in fairness that part of Mr Kirk’s criticism of PC Roch is shown to be unjustified (namely the assertion that in evidence at the magistrates’ court PC Roch had deliberately covered up the fact that Mr Kirk had produced his insurance certificate to Ely police station by posting a copy through the letterbox; whereas in fact Mr Kirk’s own letter to the magistrates’ court of 29 September 1997 conceded that PC Roch had stated in his evidence to the court that he had knowledge of another police officer receiving the documents).

682. Critically, the prosecution was considered and instituted by others, and could not possibly be impugned in respect of the charges of no seat belt and no insurance (see above). Defects are (now) conceded to have been present: it would have been for the court to decide whether the case was made out. It is for Mr Kirk to show that the Defendant acted without reasonable and probable cause for prosecution. Subject to overarching review of the evidence, on the evidence individual to this incident I am not satisfied that he has done so.

*‘Subject to overarching review of the evidence’*

**On failed production of the Appellant’s proof of insurance, on the 35<sup>th</sup> occasion, he had refused and found not guilty, on the ‘balance of probabilities’, that he would be insured.**

**Since that Cardiff magistrates’ acquittal, on all charges, see-Action 3, 5.1-3 the VW Campervan around the Hayes Roundabout 21 May 2002, he has refused production of ‘any of his driving documents’, seven times, when ever asked by a uniformed police officer so to do . To do so would only put at risk his insurance being renewed.**

**Seven further examples, with documentary proof, of police criminal conduct but who really cares as to whether the Appellant was ever insured these past thirteen years?**

