**Action 2 Paragraph 11 stop at junction of Newport Road and Albany Road Cardiff 5 April 2000**

**This violent incident caught on their own CCTV shows the lengths to which the South Wales Police were prepared to go in order to delay its disclosure until after the criminal Crown Court appeal was lost so as to assist in causing the veterinary surgeon being ‘struck off the register.**

**The full extent of that redaction of the CCTV footage is not known, during the time PC Osbourne had smashed his way into the Appellant’s vehicle and assaulted him before then dragging him out having not been arrested.**

**No breath test was contemplated until instructions from senior management moving the video camera accordingly and no doubt, to try and fabricate an excuse of the actions of an officer in a flaming temper.**

**Their victim was left for a significant time, without handcuffs in a police van to deliberately try and provoke him to try and escape. their through the deliberately left hide open double back doors. The Appellant refused to fall for their obvious ploy to justify what had just happened and was later cleared on a negative police station definitive breath test without even an apology.**

**Osbourne’s excuse was either at magistrates, if there was a hearing or in Crown Court or at the Royal college that he saw some empty beer cans in the vehicle and assumed the driver was ‘over the limit’.**

**Appellant had been, all morning, proving the irregular conduct of Now Inspector Rice, then a sergeant in Barry police station having detained the Appellant, over night, whilst recovering from the violent assaults, first by ex inspector Howard Davies an then Security guard who had knocked him to the ground from behind, the Vale of Glamorgan Agricultural Show. He detained the Appellant, in custody over night, without either a charge or summons to allow it.**

**The learned trial judge in these civil proceedings had ‘struck out’ quite wrongly, part of the PC Osborne incident and the whole of the Vale of Glamorgan incident both successfully embellished upon before the Royal College of Veterinary Surgeons’ 2002 Disciplinary Committee.**

**This civil court argument was that a conviction existed and therefore the conduct of PC Osborne is irrelevant. The Appellant submits that is wrong.**

**At original magistrates court all five offences were not defended in order not waste time as the appellant was very short staffed in an environment where, clearly, everything had already been settled even without evidence yet heard.**

**When the Appellant had brought it to their notice, again, that the MOT, insurance and ‘no seat belt’ were all easily proven as valid, by relevant documents, the latter valid by doctor’s letter, all three convictions were reversed. These, along with the CPS having already withdrawn the ‘mobile phone’ allegation, left only one.**

**Once the overhead video was known about the Appellant tried to again change his plea on the remaining breath test conviction but was refused, he believes unlawfully as no evidence was allowed to be heard at any time.**

**That video, in copy of original form, remains undisclosed along with the plethora of police audit trail, previously applied for and refused.**

**That single conviction remained in order for the police to have him off the road and make a written complaint to have his name removed from the veterinary register.**

**As for ‘using a mobile phone’ and the CPS having offered ‘no evidence’ further supports the Appellant’s claim that Osborne’s purported ‘car chase’ carried no offence nor had reasonable cause. It currently stands that the single conviction, denied, has nothing to do with the requirements of a veterinary surgeon but with Osborne making the assault on his victim, without an arrest, germane to the Appellant’s right of compensation.**

1. **Action 2 Paragraph 11 stop at junction of Newport Road and Albany Road Cardiff 5 April 2000**. This head of claim was subject of an application to strike out. I gave written judgment on 30 November 2010. For the reasons there set out I struck out the claim for wrongful arrest and malicious prosecution for an offence of failing to provide a specimen of breath. The other allegations remain. Those are (i) unlawful detention, namely that “the detention of the Claimant beyond 12.05 was longer than was reasonably necessary and was in breach of the provisions of the Police and Criminal Act 1984”; and (ii) malicious prosecution for offences of driving without valid insurance and MOT certificate, and failing to wear a seatbelt.
2. The pleaded defence is that Mr Kirk was observed by PC Osbourne driving a Peugeot car in Park Place Cardiff, not wearing a seatbelt and observed to be using a mobile phone; further that when Mr Kirk’s vehicle was stopped at a junction, PC Osbourne went up to the window of the vehicle and requested him to stop, but Mr Kirk locked the doors to his car and drove off. It recites details of the arrest for refusal to provide a specimen of breath and removal to Roath Police Station; asserts that Mr Kirk’s detention was lawfully authorised by PS Roberts the custody officer, that Mr Kirk then informed PS Roberts that he would provide a specimen of breath, and arrangements were made to transport him to Rumney Police Station for a sample to be provided.

‘

**Where, exactly, did the Appellant ‘drive-off’ to when CCTV indicates stationary in a police cordoned off queue of stationary traffic?**

1. “Once at Rumney Police Station, the Claimant provided a specimen of breath which indicated an alcohol level below the legal limit. Such was the Claimant’s behaviour however, that the custody sergeant at Rumney Police Station Sergeant Pickett authorised…. Further detention so as to enable him to be assessed by a doctor as to whether he was driving whilst unfit through the consumption of drugs”. A Dr Lush arrived at 1:11am, Mr Kirk refused to allow the examination to proceed, on the grounds that Dr Lush was unable to provide written proof of his position; as a result Mr Kirk was charged with a number of matters following which he was released from custody at 2:02am. There is a denial that the police acted maliciously or without reasonable or probable cause.

**Incorrect- police tried dealing their usually infallible ‘gulag card’ to incarcerate their victim in a psychiatric prison**.

1. As I set out in my judgment on preliminary issues, the stop was on 5 April 2000. In respect of the seatbelt, MOT, and no insurance prosecution, it appears from correspondence of the Crown Prosecution Service (letter of 22 May 2002) that Mr Kirk attended the CPS on 21 May 2002 to produce a valid MOT certificate, resulting in the CPS not wishing to pursue that matter further; and produced evidence of medical excuse for not wearing a seatbelt. As to the MOT certificate, it was urged for the Defendant that this, in May 2002, was the first indication that any MOT certificate had been produced; and that the production of evidence as to medical reason not to wear a seatbelt was a tacit acknowledgment that he was not wearing a seatbelt on the occasion of the incident on 5 April 2000. Thus, it was argued, there could not therefore be an absence of reasonable or proper cause to prosecute in respect of either of these matters; and the certificate of insurance that was produced appeared to be for a different vehicle.
2. In my written judgment I noted the strong criticism expressed by His Honour Judge Jacobs of the evasive way in which Mr Kirk dealt with insurance for his various vehicles. These seemed to me powerful points, “which might very well decide the claim at the end of these proceedings after the hearing of all the evidence”. However I ruled that it was not inconsistent with the ultimate finding of the Court *as a matter of record* to pursue the claims and it was conceptually possible that Mr Kirk might deploy evidence and or make progress in questions of the police officers concerned, “in a way which gave more strength than now appears to his claims”, (paragraphs 113 and 114 of that judgment). I adopt in full those observations here.

A successful observation by His Honour Judge Peter Jacobs, the day he was due to get out of South Wales himself, for good it was assumed, following his own admission the Appellant’s insurance head office had again been bothered, this time by the CPS on behalf of his own Honour’s request.

**What the learned criminal judge, however, did not make public was that he had, before the hearing, first asked the Cardiff Crown Court manager to plead with the Appellant’s good nature to explain the web ‘weaved’ by the police, to deceive.**

**The Appellant was NOT legally obliged to but for nearly an hour during his busy surgery time he answered the clerk’s questions proving the reasoning behind why this veterinary surgeon needed to use so many vehicles and insurance companies.**

**As this trial has now proved the police had pestered his agent and insurance company directly, knowing it would only be a matter of time before the motorist was refused insurance cover.**

**Why, also, there had to be so many practice vehicles appearing to be foreign and registered in such names including, ‘Onest ‘Arry, a retired Guernsey car dealer, G Mallory Esq, possibly the first climber to have conquered Everest, Whilbur Smith and numerous members, past and present, of the Kirk family.**

1. This was a morning when Mr Kirk had left the Crown Court “where I was spending most days, at the height of police harassment” and says that he was aware that he was again being followed by the police. In his statements he says that whilst stationary at a traffic jam he was attacked and dragged out of his car by PC Osbourne who promptly arrested him and, Mr Kirk is insistent, nonetheless left the door of the police van wide open in the hope that he would abscond and give the police yet more material to pursue against him.
2. Whilst Mr Kirk says he did not ever refuse a breath test at the scene, that is a matter which is not open to me to consider, in the light of the binding conviction for failing to give a breath test and for the reasons set out in my judgment on preliminary issues of November 2010.

**The learned civil court judge, it is submitted, erred in law again on this recurring issue as he was only too aware of the police psychiatrist’s conduct, as he had sat in judgement, (failed ‘strike out’ of the Claimant’s multi thousand damages claim against Dr Tegwyn Williams for falsifying his vitim’s psychiatric report when not having the knowledge/qualifications, in the first place, to have written it.**

**Police had blackmailed Williams to have the Appellant locked away, if not shot, for life and MAPPA registered should neither the fabricated police ‘machine gun’ case, for a mandatory minimum 10 year imprisonment or the Ashworth high security psychiatric hospital application, for life, also failed.**

**It is submitted that the overarching format of this incessant harassment in these and other similarly vivid particulars of claims should of been taken into consideration rather than ‘striking out’ such an incident so brilliantly exposed on film,as the Oborne would be, with disclosure, despite senior management intervention to leave the best ‘footage’ on their Bridgend HQ’s ‘cutting room’ floor.**

1. Mr Kirk says, “Later I was taken to two police stations, knocked about, refused custody videos be retained they leaving, as they do, my car full of drugs, unlocked with the window down…. A negative breath test caused further detention for a drug test and waiting for doctor. I was very frightened, as harassment had lately become dangerous and irrational” (witness statement 19 June 2009 paragraphs 692-693).
2. Mr Kirk sets particular store on a video from a street camera which shows that it took only moments from the police van pulling up behind him to his window being smashed and him being removed very forcibly from his car. Objection was taken to me viewing this video, on the basis that judgement on preliminary issues barred Mr Kirk from complaining of the lawfulness of the arrest. I ruled that I should look at this evidence, in case it cast light on those allegations which remain. It shows that it is only some six seconds, from the police van pulling up behind Mr Kirk’s car at the junction of Newport Road and Albany Road, to his car window being smashed and his immediate forcible removal from the car.
3. Mr Kirk relied on a witness statement prepared, according to its own date, on 6 April 2000 (in other words, the next day) in which he states that he was taken to Roath Police Station and made it clear that he was quite happy to do a breath test, and was transferred to Rumney Police Station where he gave two zero readings on their breath machine. “I told the Sergeant that they had to release me or they would be sued for false imprisonment. He said I believe you are under the influence of drugs and you will have to be detained and be examined by a doctor and if you refuse you will be detained in custody for Court tomorrow’ about an hour and a half later a doctor came to the cell and explained his position. I asked if I was legally obliged to be examined? He didn’t know, so I demanded the Sergeant. The Sergeant admitted that there was not a legal obligation but it would be recorded as a refusal. I asked to be examined without further delay”…. The doctor was unable or refused to produce any form of identification before the medical examination and appeared to leave the police station in haste! I was then detained a further half an hour for finger prints, DNA test and photographs”.
4. As to the assertion that Mr Kirk was taken to two police stations “[and] knocked about….”, (statement of 19 June 2009) he made no suggestion of assault at the police station or stations in the statement he made the next day,
5. The police evidence of what led to the stop is primarily that of PC 1215 Osbourne, with some contribution from PC 3689 Price, each of whom gave evidence at trial before me. PC Osbourne and PC Price were in a marked police vehicle in Park Place Cardiff and Mr Kirk was driving the other way. PC Osbourne says that the driver appeared not to be wearing a seatbelt and also to be using a mobile phone and so he turned and followed Mr Kirk’s vehicle. At a junction, Mr Kirk’s vehicle stopped at the lights, PC Price left the police vehicle and knocked on the passenger window of Mr Kirk’s car; PC Osbourne says the driver turned and looked at PC Price but then looked away, PC Price then went to the driver’s window and knocked, the driver looked at him and then locked the door driving off on the green light.
6. There are handwritten “notes made at scene of incident/arrest” timed at 11:25 to 11:35 (namely some 25 minutes after the stop), on which there is a date stamp April 5 00 and a time stamp 11:35. PC Price has endorsed this with “I have read the above notes and they are a true account of the events that took place” (A2/5.79-80). According to this the Peugeot moved off and the police vehicle followed, PC Osbourne on his own account flashing the headlights on the police van and sounding two-tone horns in an effort to attract his attention and to get him to stop “so I then used my personal police radio to inform other police units we were following a vehicle which was refusing to stop”. Mr Kirk’s car came to a halt in lane three at the junction of Newport Road and Albany Road because of stationary traffic at the traffic lights.
7. A marked police van stationed itself to block the movement of all vehicles in Newport Road including Mr Kirk, “at this point I left my vehicle and went to the drivers door of the Peugeot, it was still locked, I knocked on the window *and Mr Kirk ignored me*, *I continued to indicate to him and ask him to open the door. He refused to do so. I then went to the rear passenger door, on the drivers side, this door was also locked so I then used my PR24 baton* and I smashed the rear passenger window. I smashed the rear window so that Mr Kirk would not be sprayed with glass. I then reached into the vehicle and unlocked the drivers door by lifting the button on the door…. Having opened the drivers door of the Peugeot I removed him from the vehicle. I cannot recall if by now he had his seatbelt on.” (witness statement PC Osbourne, A2/5.22-23 paragraphs 7-11, emphasis supplied).
8. Turning first to Mr Kirk’s evidence at trial, some of it was inherently unlikely. He was unaware that the police were trying to attract his attention with a view to stopping his vehicle. This is improbable. He said that something ‘caught his attention’, which he accepted might have been PC Price knocking on his car; and that he could see the “middle part of a person” behind his car whom he ‘assumed had something to do with’ the police van he saw directly behind him, In cross examination he told me that slightly further down the road, (it would appear at the next junction) he took a photograph of a (Volvo) car which he thought was a police car. This is consistent only with Mr Kirk being aware that the police were following him and trying to stop him.
9. There is no allegation in the pleadings of assault at the police station thereafter but, in the light of Mr Kirk’s overarching case of being targeted and harassed by the police in South Wales, it is appropriate to deal with it.
10. It was to Roath Police Station that Mr Kirk was taken first of all. The custody sergeant at Roath Police Station was PS Roberts. During his cross examination of PS Roberts, Mr Kirk suggested that he had there been assaulted by being dragged about by his feet while he was sitting on the floor. In cross examination, Mr Kirk told me that he was pulled around on the floor of his cell, “I’m not fingering Osbourne, ’cos I can’t remember”.
11. A little later, Mr Kirk said that he did not exclude Osbourne or Price from being involved, or present. However he did not suggest either to PC Osbourne or to PC Price that they had taken part in, or might have taken part in, or were present when assault on him took place.
12. Mr Kirk was not certain of whether the alleged assault was before or after his presentation to the custody sergeant. The custody record at Roath contains no complaint of assault, and Mr Kirk told me he could not remember whether he told the custody sergeant. There is no record of complaint at the succeeding Rumney Police Station, and Mr Kirk thought it very unlikely that he would have reported it there.
13. A video, which was played to the court (it seemed to me as much at the insistence of the Defendant as Mr Kirk), shows Mr Kirk in the corridor to the custody desk, coming through with PC Osbourne and PC Price. The video footage was played at trial a number of times and I have given it the closest attention. The custody sergeant is seen behind his desk, throughout the relevant period, at the other end of the corridor in which Mr Kirk was waiting, behind his desk. Mr Kirk thought that his mistreatment occurred in a cell where he had to sit on the floor because there was no seating.
14. The witness statement of Mr Roberts, since retired, is not lengthy. It records arrival at 11:27 and processing, at 11:31 Mr Kirk was read his rights and supplied with copies of Notice of Rights, refused to provide the custody sergeant with details; “He was concerned about animals in his vehicle and I allowed him to use the telephone to make arrangements for the animals. I have recorded that Mr Kirk was angry and refused to co-operate. He in fact sat on the floor crossed his arms and legs and refused to speak to me”. It was at 11:43 that Mr Kirk informed him that he would provide a specimen of breath so that at 11:44 Mr Kirk was transferred to Rumney Police Station. This is as set out in the contemporaneous custody record (A2/5.49-50). Thus in total, Mr Kirk was detained at Roath Police Station for some 17 minutes.
15. PS Roberts gave evidence, which I have no reason to doubt, that the only cell which does not have a bench or seat within it was the “drunk” cell, which had a camera trained on it continuously which could be viewed by the custody sergeant. As to the video shown in court, other than for snatches of a few seconds, the only officers who were at Mr Kirk’s end of the corridor were PC Osbourne and PC Price and they remain in sight whether by the top of their hands or a hand or hands resting against a wall; if so, it is difficult to see how they could have assaulted, pulled, or knocked Mr Kirk about.
16. The custody record, at Rumney police station, at 12:19 hours, records Mr Kirk as sitting on the floor as he was being booked in. Mr Kirk at trial said that this was because his ankle was hurting. (I note that the video footage displays timing at all times four minutes out from the custody record but the video footage is complete and nothing turns on this). Otherwise, it would appear to anyone else to be unusual behaviour.
17. In my judgment the most striking fact of all is that in a statement made by him the very next day, Mr Kirk makes no complaint or mention of an assault or being dragged around the floor of a cell at Roath Police Station.
18. As I have indicated, at Roath Police Station Mr Kirk was insistently sitting on the floor and in general refusing to speak to those with custody of him. Such was not contested by him in his oral evidence. It is, unless known to be because of pain or injury, unusual behaviour. It is of some interest that it is at 11:40, 13 minutes after his arrival that the log records, “DP has been identified as Mr Maurice Kirk”. At another time, the footage shows him periodically pacing around the custody unit, with his hands in his pockets.
19. The custody log shows transfer of Mr Kirk being accepted at Rumney Police Station at 11:54. The custody sergeant was PS 2244 Pickett. There, at 13:05, the log records an intoximeter showing a lowest reading of nil (in fact both readings were nil) and “he has refused to sign the copy provided by the machine”. At 12:07, it records “In view of the above, I’m not happy with the DP’s demeanour. I am therefore authorising further detention for the DP to be assessed by a doctor re being unfit through drugs”; and at 12:19, “DP searched. Whilst property being booked in DP insisted on sitting on the floor”.
20. The witness statement dated 16 January 2003 by Mr Pickett (since retired) is effectively a recital of the entries in the custody record. In oral evidence, he said that his view (that Mr Kirk might be under the influence of drugs) was based on entries by the other custody sergeant of being aggressive, refusing to answer questions or speak, “the fact that he is zero on the intoxylator indeed he might be intoxicated from some other cause. The entry at 12:19 hours of “sitting on the floor” added to the unusual behaviour.
21. Mr Kirk asked him whether there was any obligation on his own part to answer any questions in custody. Mr Pickett agreed that there was not, but said that the impression that he might be under the influence of drugs came from the fact that he was refusing to answer questions, and the change in demeanour to being angry after being allowed to use the telephone. He said that it was not based purely on that entry (11:32 “I have allowed to use the phone to arrange for the animals. DP is angry and refuses to co-operate”) but “on my views when you came into custody, when you came into custody refusing to answer, refusing to co-operate in any form indicated to me that there may be other reasons why you were acting like that other than alcohol”.
22. I myself rephrased a question from Mr Kirk, who had become too agitated to formulate an intelligible question, as follows: “Q. I think Mr Kirk is really asking this question. There’s nothing unusual about people refusing to answer questions at the police station when they are in custody? A. No, as I say everyone has a right not to answer the questions, but taken in total with the demeanour and the previous entries whilst he was in Roath I determined that there may be other reasons why he was behaving like that”.

A little later, Mr Kirk asked,

“Q. Right, point out where there is indication on the custody record that I was under the influence of drugs…. A. Uh the fact that you drove off from the officers.

Q. Sorry? A. The fact that you drove off from the officers as they tried to speak to you.

Q. Where, where was that? A. Circumstances for arrest and grounds for detention…. Your first page….. I can only base my answers on what’s on the custody record. I wasn’t present at the time.

Q. But you must have had a conversation with Osbourne…. About it…. About drugs… the possibility? A. No, I formed the opinion based on, purely on what was written on the custody record and having seen you before.

Q. So it was your idea? A. Yes.

Q. Are you sure about that? A. Yes….. because if there had been any evidence given to me by the officer I would have made a record in the custody record.

“Q. Right, point out where there is indication on the custody record that I was under the influence of drugs…. A. Uh the fact that you drove off from the officers.

Q. Sorry? A. The fact that you drove off from the officers as they tried to speak to you.

Q. Where, where was that? A. Circumstances for arrest and grounds for detention…. Your first page….. I can only base my answers on what’s on the custody record. I wasn’t present at the time.

Q. But you must have had a conversation with Osbourne…. About it…. About drugs… the possibility? A. No I formed the opinion based on, purely on what was written on the custody record and having seen you before.

Q. So it was your idea? A. Yes.

Q. Are you sure about that? A. Yes….. because if there had been any evidence given to me by the officer I would have made a record in the custody record. “

These citations are illustrations from a cross examination which repeated essentially the same questions and elicited the same answers, at some length.

1. A doctor was called to examine Mr Kirk. A Dr Lush attended, who gave witness statement and oral evidence before me and who wrote a contemporaneous note at 13:00 hours, “Initially seen in cell to request examination for fitness to drive. Possibly under influence of drugs – breathalyser - ve. He had discussion with custody sergeant regarding legality of such request. *He came to medical room and refused to speak unless I can provide written identification of my position*. Coherent speech. No overt injury/ataxia. Returned to cell by custody officer” (emphasis supplied). Mr Kirk did not contest the evidence of Dr Lush.
2. For completeness I record that I also received witness statement and oral evidence from retired PS Mahony who took over as custody sergeant for the shift from 14:00 hours to 22:00 hours. Mr Mahony had little present recollection of the event, but was the author of entries in the custody record at 13:33, “Change of custody officer: I have taken over custody duties and have enquired into the circumstances of detention and consider that they continue to be necessary. I have visited the detained person in the cell/detention room and find the detained person to be fit for detention. I have reminded the detained person of all rights and entitlements” and at 13:37 in the log records the charges placed with the unusual entries at 13:41 “the DP refused to sign charges *unless he saw the length of fingers on the officers hand* (sic, emphasis supplied)”, and at 13:52 “The DP is un-cooperative in taking of his fingerprints and force may have to be used. He has been warned of this”. At 13:59 he was bailed to the Magistrates Court.
3. Self evidently, the assessment was, once seen by Dr Lush, that Mr Kirk was not under the influence of drugs and was fit to drive. Thus Mr Kirk was released some 22 minutes after Dr Lush wrote that the detained person refused to be examined because he could not provide written proof of his position.
4. The charges were presented for hearing before the Cardiff Magistrates Court on 11 April 2000. Mr Kirk in fact pleaded guilty to all of the offences, (save for not having proper control of the vehicle; no evidence was offered in respect of that). He was subsequently sentenced in respect of the charges to which he had pleaded guilty (see A2/6.139-146). He then attempted to vacate his guilty pleas and enter not guilty pleas. In judgment on preliminary issues I recorded fully the sequence of appeals, application for judicial review to the single judge, and renewed application to the Administrative Court, and appeal with refusal of Mr Kirk’s attempts to resile from his plea of guilty.
5. With remarkable persistence, Mr Kirk wrote to Cardiff Magistrates Court asking it to re-open his pleas of guilty to other offences, and on 20 May 2002 District Judge Watkins decided to set aside the conviction for no insurance and allowed Mr Kirk to change his plea with a not guilty verdict being entered. It is clear that the court was told that the prosecution accepted that Mr Kirk had valid insurance on the day of his offence. I refer, as elsewhere, to the caustic comments of His Honour Judge Jacobs about Mr Kirk’s insurance habits while driving vehicles registered in the name of others, and the late production, time and again, of evidence of insurance.

**A basic necessity, now proved, of survival if one is so foolish to as to practice veterinary surgery and try to raise a family in a place like South Wales-see paragraph 862**

1. In relation to the offences of no seatbelt, no MOT certificate, and no insurance, I adopt that which I set out in the judgment on preliminary issues (including the fact that Mr Kirk later produced medical evidence of a reason not wear a seat belt, from which it is reasonable to infer that he was not wearing a seat belt when first seen by PC Osbourne; and Mr Kirk’s unusual habits of insurance which are calculated to induce suspicion of driving without insurance. In relation to these offences, nothing has emerged since that judgment which properly supports any case of malicious prosecution.
2. I have borne in mind throughout the street camera video footage which shows Mr Kirk being dragged from his car. It demonstrates that it took only 6 or 7 seconds from the moment when PC Osbourne alighted from his own police vehicle to the time that he dragged Mr Kirk from the car. I found PC Osbourne’s explanations for this, and his evidence in general, profoundly unimpressive. I do not accept that he pursued the measured and rational process which he alleges in his witness statement (namely of going to the driver’s door, still locked, knocking on the window, Mr Kirk ignoring him, he “continuing” to indicate to Mr Kirk and asking him to open the door and only then going to the rear passenger door to smash the rear passenger window).
3. On the other hand, it was reasonable for PC Osbourne to conclude that Mr Kirk had deliberately not responded to PC Price, first at his passenger window, and then at the driver’s window, at the previous location when Mr Kirk had come to a stop.
4. I am bound by the finding of an offence of refusing to give a specimen of breath at the roadside (of which Mr Kirk remains convicted). In April 2000 PC Osbourne was a uniformed patrol officer stationed at Cardiff Central Police Station. Mr Kirk was no slave to authority or conventional restrictions. I find it strongly probable that Mr Kirk was not wearing a seatbelt (see above) and plausible that Mr Kirk was using a mobile phone when driving, as PC Osbourne says he was.
5. It is natural for Mr Kirk to associate this stop with the fact that he had just returned from the Crown Court, dealing with matters of complaint against police actions. However there is no positive evidence of prior acquaintance between PC Osbourne and Mr Kirk (or between PC Price the accompanying officer and Mr Kirk). Once there was a refusal of breath specimen at the roadside, and given that such a finding binds me, there was lawful reason to arrest Mr Kirk and take him to the police station. Yet again, I have considered whether the facts of the immediate incident as I have found them are susceptible to proper inference of a wider picture that it was by way of targeting or malicious selection of him for police attention or treatment that Mr Kirk was stopped, and/or dealt with thereafter, on this date. However I find it strongly probable that he was wearing no seat belt, and probable that he was using a mobile phone as the police officers Price and Osbourne stated, so that there would be nothing particularly unusual in the police vehicle following him; conversely there was something unusual in the fact that the driver deliberately ignored PC Price knocking at his window, (since I am satisfied that Mr Kirk did ignore him knowing that it was a police officer), and that he then drove off. The sorry fact is that by now Mr Kirk’s view of the police was so bitter that he was prone (if he could) to ignore what any police officer said to him or did; and thereby he was prone to bring more suspicion upon himself by the individual police officers who encountered him.
6. In rushing to Mr Kirk’s car to break a window and drag Mr Kirk out PC Osbourne was acting angrily, and it may be intemperately, but that is not the same as acting in pursuit of a conspiracy to target and inconvenience Mr Kirk, at least as evidenced directly in respect of this occasion.
7. It scarcely needs to be stated that it follows, from the conviction of failure to give a breath test at the roadside which stands and which binds me, that there was lawful reason to detain Mr Kirk until the zero reading at Rumney Police Station at 12:05. Has it been shown to be lawful to detain him longer than that?
8. Mr Kirk is certainly in a mould of his own, with his own logic and view of things. He clearly did not, in evidence or at trial generally, regard it as odd that he should sit on the floor in the custody reception area, or odd that he should refuse to be examined by a doctor unless the doctor produced written identification that he was a doctor. Others are likely to have found these behaviours more than odd. Custody officers unacquainted with Mr Kirk, (and I find on the balance of probabilities that these custody officers were unacquainted with Mr Kirk) may not know or see through the eccentricity. The behaviours were likely to be viewed as odd by custody officers both at Roath police station and at Rumney police station. On the authorities cited to me, a police officer including a custody sergeant (and in particular the custody sergeant at Rumney police station), is entitled to rely upon what he or she has been told by another officer whether that information is conveyed directly, or contained in documents, such as the custody record.
9. In the end I have concluded that it is not implausible that the circumstances related by the arresting officer, with the (true) account of Mr Kirk driving on and not stopping despite the police approaching him, and his distinctly unusual behaviour at the police stations, would in the presence of a zero alcohol reading reinforce a suspicion that he may have been driving under the influence of another substance. Within 22 minutes of the doctor’s attendance he was discharged from custody. I consider that the Defendant has shown that it was lawful to detain him during the period they did.