**Action 2 paragraph 8 – 8 August 1999 stop at Pontypridd Road Barry**.

1. **No admission of a traffic offence**
2. **No conviction**
3. **Immediately stopping in under 50 yds**
4. **A positive road side breath test reading**
5. **An absolute zero reading on the Lion ‘definitive’ test within 20 minutes**
6. **Police switch to ‘failure to give breath test’ so it is Kihilberg/Osborne words against their victim to secure two convictions to obtain Appellant;s name is removed from veterinary register.**
7. **Lion intoximeter manual. produced at magistrates, Scientific fact proves the road side test, if reported as ‘red’, fiddled**
8. **And what is this novel suggestion ‘using alcohol in his work’ to affect a breath test and see 16th August 1999 incident, ‘dangerous driving’ collapsed trial. There was no evidence of its relevance, what so ever, in either incidents. ‘No alcohol on the breath’ was indicated.**
9. **Action 2 paragraph 8 – 8 August 1999 stop at Pontypridd Road Barry**. It is common ground that Mr Kirk was stopped whilst driving a white Ford Escort car J755 KGA. He was required to give a breath sample. His claim is that the reason given for stopping him by PC Amy Brown was that he had driven through a red traffic light; on giving a breath sample he was arrested on suspicion of driving with excess alcohol; but at Barry Police Station a further breath test proved negative with zero on both breath sample readings. Mr Kirk’s case is that his arrest and detention were unlawful in that there were no reasonable grounds to suspect that he was probably guilty of the offence for which he was arrested and no evidence that he had committed the offence with which he was charged; and that the decision was to arrest and detain him was such as no reasonable police officer would have reached. It is further alleged that he was detained at Barry Police Station for longer than was reasonably necessary.
10. He was reported by PC Abigail Brown (now a married woman and Detective Sergeant 3849 Abigail Biddle) for failing to produce his insurance and MOT certificate, driving without insurance and without an MOT certificate, and failing to comply with road traffic signals. He was required to attend Barry Magistrates Court where he was convicted, but the convictions were overturned on appeal at Cardiff Crown Court.
11. The pleaded Defence is that ‘PC Brown and Special Constable Lewis were on patrol duty when they saw ahead of them the Ford Escort accelerate away from the police car reaching a speed in excess of 45mph on Pontypridd Road a 30mph road. .. Mr Kirk’s car drove through a set of traffic lights when the lights were showing red against it. PC Brown smelled alcohol; he was asked but said he had no idea why he had been stopped; he said he did not notice the red traffic signal; a positive specimen of breath was provided such that he was cautioned, arrested and taken to Barry Police Station. On provision of a further specimen of breath which was negative PC Brown issued him with an HORT 1 Notice, following which at Barry Magistrates Court he was convicted of the offences for which he was reported, no admission being made as to the outcome of the appeal case.
12. I received witness statement and oral evidence, respectively from Mr Kirk, PC Brown, and PS Lott the custody officer who dealt with Mr Kirk at Barry Police Station. By the end of examination and cross examination of Mr Kirk, a good deal of common ground had emerged between them.
13. Mr Kirk’s recollection of this incident is not acute. In a witness statement of 19 May 2002, he says that he was travelling “I believe on a Sunday morning” through Barry on Pontypridd Road, “I believe it was about 11.00am I can’t remember” (A2/2.117D); whereas the police notebooks and custody record indicate that he was arrested at 18.20 hours and came into custody at Barry Police Station at 18.29 hours. In oral evidence, in cross examination, he first could not remember the time, and then was inclined to accept that it was on a Sunday evening. (8 August 1999 was a Sunday). Asked, ‘Had the police officer not shown him the roadside breathalyser kit which had gone red’, Mr Kirk said “I don’t remember”

**Evidence of Similar Fact**

**This is another example of the inevitable consequences from many years of delay in judging the evidence with both the Appellant’s evidence and memory now lost or severely impaired.**

**In this claim the delays were deliberately brought about by the South Wales Police with a string of further maliciously brought prosecutions, now stayed by this civil judge and against the Appellant’s wishes, all of which should have been heard at this trial.**

**FOR EXAMPLE, police used a Mark Davenport (stayed action) in January 2013 to specifically harass the Appellant and to allow him to be sectioned under the French equivalent of the 1983 Mental Health Act, following South Wales Police communication with the Gendarmerie, as exactly had been achieved with the Tottenham police, to have the Appellant again sectioned to avoid the civil proceedings publicity.**

**Mark Davenport caused serious assault on the Bristol bailiff’s staff, thereby causing *grievous bodily harm*, appointed to evict Davenport from the premises where the Appellant was trying to prepare for this ongoing trial.**

**Even the fanciful allegations by Davenport were remarked on by the His Honour Judge Bidder QC, obtained the Appellant’s six months remand in custody until time ran out and the police had to dr0p all charges.**

**The police had their victim immediately further remanded, switched without warning, to defend yet another entirely unrelated trial with neither his evidence nor witnesses available at such short notice. The inability to hear the ensuing evidence was deliberate by the confiscating/theft of his new hearing aid by prison authorities.**

1. In his witness statement of June 2009 he stated he had great difficulty in obtaining and getting police to preserve the police record and that letter and phone call to the next police shift proved equally useless, ‘as they quickly destroyed the video needed to further prove harassment’ (paragraph 667 A2/2.117B) – and there is correspondence on his part seeking disclosure of records and the video (see A2/2.183, 184, 190, 193, 194 at 195, 227, 228). In oral evidence he said, “all I remember was her having a broken fingernail [the arresting officer PC Abigail Brown], and *a video, not that important, I was served with a video. It was stolen*” (emphasis supplied).
2. Asked the detail of what was said at the scene when he was stopped, Mr Kirk was repeatedly uncertain, but inclined to accept that which PC Brown had set out in her witness statement. He accepted that he may have been driving at more than 30mph. Conversely at one point PC Brown described the figure of 45mph as that which she saw on the speedometer when she was catching up Mr Kirk, after an earlier increase in the distance between them. On her own evidence Mr Kirk stopped within 50 yards of the traffic signal after she put the blue light on, which does not suggest a speed of 45 or 50mph through the traffic signal.

**Exactly**

1. Her evidence was that at the scene Mr Kirk said that he had had his last drink at lunchtime. In oral evidence Mr Kirk said that on a Sunday he might have had a can and he remembered “saying to the lady or something” that he had had a drink a lot earlier that day. As to saying to the police officer “I have had one can of beer with my lunch”, Mr Kirk did not remember it, but said that he had stated this in one of the incidents, and was ‘prepared to accept’ that it was this one.
2. Each of the police officers in their contemporaneous statements recorded Mr Kirk as getting out of the car and, on the phone, reading out to the recipient of the call their police collar numbers (which was doubtless as a result of his belief by them that he was being harassed by the police). Mr Kirk did not remember doing that but “it would have been a routine thing” to do so.
3. In the contemporaneous police notebooks and statements, PC Brown recorded Mr Kirk as stating “I didn’t notice the red traffic signal” and in cross examination Mr Kirk said “Exactly, there was no red traffic signal. I used something [i.e. some words] similar”. In her witness statement of 17.12.2009, Mrs Biddle said that prior to breathalysing Mr Kirk, he told her that he was in a rush and had been on his way to treat an animal, saying that animals were far more important than humans, or words to that effect, and impatiently replying “Yes yes” when required to give a sample of breath for a breath test. In cross examination, Mr Kirk agreed, “That fits”, and “Q. Did you say ‘animals are more important than humans’? A. If I was annoyed at being harassed, it’s the sort of thing I might have said”.
4. Having accepted this incident might have occurred at about 6.00pm, Mr Kirk said that he would be coming from one routine surgery to another. Asked whether he would have used alcohol in the course of these surgeries, Mr Kirk said yes.
5. Mr Kirk was convicted in the Magistrates Court of offences of contravening the red light, of using the vehicle without MOT and of using a motor vehicle without insurance (A2/2.238).
6. Was there groundless prosecution of Mr Kirk for an offence of no insurance? In the present incident, Mrs Biddle gave evidence (in accordance with her witness statement of 17.12.2009), that on being served by her with a HORT 1 form to produce MOT and insurance certificates, Mr Kirk replied “I won’t be producing any documents”. In the hearing before me Mr Kirk did not dissent from this. (Mrs Biddle gave evidence that he had produced his driving licence to her on request). In more general terms in the trial before me, Mr Kirk told me that it was as a matter of pride, and/or of prudence, that he chose not to produce insurance or like documents to the Magistrates Court, in order to demonstrate on appeal the absence of legitimate cause to prosecute him. To state the obvious, that is likely to lead to conviction of the offence in the Magistrates Court.

**With respect to His Honour, after the 35th time the Appellant was ordered by police to produce the identity of his London based insurance company, as if the police did not already know, he refused. see- Action 3, 5.1-3 the VW Campervan around the Hayes Roundabout 21 May 2002**.

**From May 2002, when ’struck off.’ he has always refused, seven times or so, to produce driving documents with no consequences, of course, because he can no longer practice veterinary surgery and police were now stopping him on any other possibility to have him banned.**

1. The conviction in the Magistrates Court was on 22 March 2000. (A CPS internal memorandum states “I do not propose to detail the Defence – I did not understand it myself!” (A2/2.259). On 5 June 2000, after his conviction in the Magistrates Court, Mr Kirk wrote to the CPS a letter which stated “however I do enclose my valid insurance and MOT…. I am not sure whether it is necessary for a higher court to hear an appeal concerning failure to produce documents which carried no penalty” (A2/2.242). Mr Kirk did not suggest during the hearing before me that he produced the relevant documents prior to this letter. I have searched each of the relevant bundles, mindful of Mr Kirk’s disorganisation at trial and his capacity to forget the existence of relevant documents (which I habitually had to bring to his attention) but I have discovered no documents which suggest that he in fact did so prior to this letter.

**Of course the CPS withheld the Appellant’s defences from His Honour Judge Jacobs as it was now plainly obvious to even the lowest of observers, to this heinous police tactic of hounding the driver’s insurance company, but the South Wales Police must not have their name tarnished, must they?**

1. The insurance document was in fact a certificate of motor insurance in respect of a vehicle D816 BRF (A2/2.255) whereas in this incident Mr Kirk was driving a car J755 KGA.

**Perfectly legal but it always slowed police senior management to spend more man hours, than first anticipated, the victim’s only defence for the relentless harassment**

1. Contemporaneous documents of the CPS for the appeal hearing itself record simply that counsel was instructed to offer no evidence. (It also records (A2/2.263) that £250 costs out of central funds were awarded, presumably to Mr Kirk, and contrary to his repeated assertion that he has never been awarded costs in respect of a failed prosecution). Once the appeal from the Magistrates Court was listed, CPS notes of 9.6.2000 identify that the insurance faxed documents did not relate to the vehicle which Mr Kirk was driving on the occasion of being stopped; but that Mr Kirk was saying that his mother owned the vehicle, i.e. on his own insurance he would be covered since he was driving a vehicle which somebody else owned

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**Well, at least a CPS barrister realised this was another example of harassment of a motorist, groundless where prosecutions were concerned and owing to his proximity to Cardiff court gossip no doubt knew the Appellant often refused to produce late to protect subsequent harassment, as this court heard so vividly in evidence, of his London insurance company.**

**Further, no doubt, the barrister considered it was extremely unlikely for the Appellant to have been driving through a red light and without motoring insurance as a local working veterinary surgeon so often employed by the police for both routine and emergencies without notice.**

**By August 199 this barrister would have bound to have known, from the Barry police station CPS office that this Appellant had now been made to produce his valid insurance over 30 times without any difficulty.**

**What is particularly significant is that His Honour Judge Peter Jacobs was presiding and not shown the now ‘found’ memo deciding a similar route, with CPS, on a foregone conclusion of an acquittal in any event.**

**In the absence of both the prosecuting barrister and memo in court, now fabricated since, if not withheld from Crown court, either way indicates yet another example of police malice and adds to the considerable list of cases that exposed such repetitive conduct even when the occasional conviction was eventually achieved.**

1. A letter dated 1 September 2000 from the CPS to the Police Superintendent at Barry states “you will see that PC Brown says that he(sic) is unable to assist the CPS in relation to obtaining the V5 vehicle registration document in respect of Escort J755 KGA. The document of insurance produced by the Defendant to the Court was not accepted as it relates to another vehicle D816 VRF. Without having the vehicle registration document for vehicle J755 KGA, which the Defendant was driving at the time of the offence, we will be unable to prove the case against the Defendant. The Crown therefore, in the circumstances, will allow the appeal if the evidence cannot be obtained. Please could you contact by return if there is any difficulty in securing the evidence or if you agree with the appeal being allowed in this particular case” (A2/2.265-266).
2. It is a matter of record that His Honour Judge Jacobs, who dealt with appeals from Mr Kirk in respect of insurance on more than one occasion, passed strong comment on Mr Kirk for his practice of using vehicles which he asserted were not owned by him, under a certificate of insurance permitting the driving of vehicles not owned by him, in circumstances which demanded elaborate enquiry of whether the vehicle was or was not covered by reason of the ownership of the vehicle.
3. First, Mr Kirk agrees that there was a moving traffic offence (driving above the 30mph limit). Therefore, the police had lawful grounds to stop him and had the power to require evidence of compliance with insurance and, on a car of this age, an MOT certificate. Second, it is not surprising if a driver does not produce his MOT and insurance documents, (as is the case here) and if he unequivocally states that he will not be producing them, (as is the case here), that he is reported for failing to produce them and/or for not having insurance or MOT. Third, as to the discrete charges of insurance and MOT certificate, in my judgment it scarcely lies in Mr Kirk’s mouth to complain of being reported, and prosecuted, for using a vehicle without insurance or MOT certificate, when (as is the case here), he adopted the stratagems he did and roundly told the police officer in question (a police officer newly qualified) that he would not be producing documents, and then declined to produce the documents to the magistrates’ court.

**Incorrect – the police always knew the Appellant would be driving with valid insurance as proved so many times both before and since this incident.**

**The police wanted ‘spot checks’ to harass on the off chance of a roadworthiness issue, especially in this incident proven to be a borrowed car from another veterinary surgeon in his practice.**

**Knowing a local judge would, quite likely, balance the ‘smell of alcohol in car of a busy veterinary surgeon’ and ‘use at work’ as supporting the harassment incident it is time in this narrative to point out the obvious:**

**Taken verbatim from Appellant’s son’s rough notes**

1. Was there unlawful arrest because there was no ground for suspicion of driving with excess alcohol?
2. The heart of this allegation is that when taken to the police station, the test showed negative. It is a matter of natural concern or enquiry that following a road side breath test which is alleged to have been positive, within some 20 to 25 minutes the definitive police station breathalyser gave analysis of two breath samples at zero alcohol each. Mr Kirk is, or has been, deeply sceptical that the road side breath test could have given any positive reading.
3. The central factual questions are twofold. Was Mr Kirk stopped in the first place, and/or arrested at the scene, simply because he was Mr Kirk? Separately, does the evidence establish on the balance of probability that the breath test administered at the scene did nonetheless show a positive reading?
4. As to the first of these factual questions, I have to consider what police experience, and what knowledge of Mr Kirk, the arresting officers had or may have had.
5. First, I was able to give close attention to her manner and demeanour while giving evidence. She was attentive to questions, and she was considered in the evidence which she gave in reply. Asked in evidence in chief whether she had met Mr Kirk prior to this, she said “Never” with a slightly furrowed (and apparently genuine) look; asked whether she had heard of him prior to this, she answered “Never” (with the same look, holding her fingers in front of her mouth).
6. Second, it is not reliable to go upon demeanour alone but PC Brown (as she then was) joined the police on 28 September 1998 as a probationer, and finished training on only 5 February 1999. She then went to Penarth, and she had been stationed at Barry for some 6 weeks only, at the date of the Pontypridd Road stop. She told me that until that day she had never met Mr Kirk, and asked what the gossip was in the police about Mr Kirk, she answered that “The officers were much more senior, that you were odd, eccentric, I wasn’t really in the loop. “[Mr Kirk] Q. Nothing more derogatory than that? A. No. Q. Anything to suggest that I had disrespect for law or order? A. No just a vague comment that you didn’t like the police, and I can say that you didn’t like being in the custody area”. “… Q. Did you hear about me using mouthwash? A. Subsequently. I was not aware of any complaint….”.I have trowelled forward and back in the pages of documents relating to this incident, and to incidents more generally, without identifying any involvement of PC Brown (as she then was) in arrest detention or prosecution of Mr Kirk for other offences, or other occasions when Mr Kirk was or was said to have come under suspicion.
7. Her accompanying officer was a Special Constable Lewis. I did not receive evidence directly from Special Constable Lewis, but it is evident that he was not part of the full time complement at any police station in Barry or the Vale of Glamorgan; and it was not suggested that he had prior or other involvement with Mr Kirk.
8. Third, Mr Kirk had (as he agrees) committed a moving traffic offence by exceeding the speed limit and police officers may stop a driver on that account. Once stopped, from his own evidence of having used alcohol clinically at his surgeries that day, I consider it probable that there was some smell of alcohol and request for a breath test would be unsurprising.

1. Fourth, her evidence (and the contemporaneous statements and police notebook of SC Lewis) recite only that they came across Mr Kirk’s vehicle in front of them, and his increasing the distance from them at a speed above the speed limit. His own evidence accepts the likelihood that he was exceeding the speed limit; as is consistent with the evidence of his concern that evening for an animal needing his care.
2. As to the discrepancy between a zero zero reading at the police station, and a reported positive reading at the road side, Mr Kirk initially asserted that there was no turning “red” of the kit at the road side, but in evidence before me he then said that he did not remember whether this was the case. When asked directly, ‘did the police officer not show [to him] the roadside breathalyser kit which had gone red’, Mr Kirk replied “I don’t remember”.
3. This aspect is of obvious importance. Mrs Biddle told me that in those days it was unpredictable whether the road side kit would show positive, even on modest consumption of alcohol. Here, Mr Kirk accepts that he had consumed some alcohol early in the day, and that he had used alcohol at the surgeries from which he was travelling. The latter is capable of explaining the impression PC Brown formed of alcohol being present. I can perhaps safely conclude that the former is, at least on his own evidence of consumption ‘at lunchtime’, unlikely to have lingered long enough to have turned a breathalyser red, but his memory of this day and its timings is not reliable (see above). I do not criticise Mr Kirk for it, but I do not have any expert evidence on whether a positive reading at the roadside is, in the light of a given consumption of alcohol at a given time, consistent or inconsistent with a zero zero reading at the police station (assuming that to be 20 or 25 minutes later). At trial, Mr Kirk did not pursue his questions of Mrs Biddle with particular zest, but I do not set great store by that: Mr Kirk’s energy waxed and waned on different days of the trial and at different stages of it. I set rather more store by the positive impression I myself formed of the demeanour and internal consistency of the evidence of PC Brown/Mrs Biddle before me.
4. If a test had showed negative at the roadside, yet he had been arrested, the probability on all the other evidence in these proceedings is that Mr Kirk would have identified the fact with alacrity and complained bitterly of it to the custody sergeant at the police station, yet that does not appear on any record before me. As I record below, he was positively complimentary of the custody sergeant who dealt with him; in addition, he is presently uncertain whether at the roadside the test showed red (positive). Mr Kirk advances a case of him being deliberately harassed in general, but I do not find that he has established this was so on this occasion, or that otherwise he was “targeted” for arrest or prosecution by PC Brown (and/or SC Lewis).
5. (I note also that in a written complaint by Mr Kirk recorded at his veterinary surgery on 30/1/2000, it reads “I was stopped and breathalysed at Pontypridd Road Barry. Then arrested for a positive breath test (actually I had not been drinking). I had been [illegible]) and conveyed to Barry Police Station” (A2/2.185). There is no positive suggestion that the road side breath test was shown to be negative).
6. Accordingly, and in reliance on the evidence of PC Brown (as she then was) I consider that it has been shown on the balance of probabilities that the roadside test showed, (whether accurately or not), a positive red light; in which case the police officer, who had smelled alcohol, had reasonable ground at that time to suspect that Mr Kirk had committed an offence of driving with excess alcohol and the arrest was lawful.
7. Was there unlawful detention in that he was detained for an excessive time? There remains one allegation of fact which Mr Kirk makes against PC Brown, as she then was. His assertion is that after formal release from detention at the police station, nonetheless PC Brown then served Mr Kirk with an HORT 1 notice, and caused him to be detained at the police station for such time as was required for her (or another) to go and identify the registration number of the vehicle, which the arresting officers had at the road side omitted to record.
8. Although Mr Kirk complains that he should not have been arrested at all, with which I have dealt above, he does not complain that there was unlawful or excessive delay in processing him up to the time of his formal release from detention at the police station, and it is clear that there was not. The police notebooks record a stop at 18.20 hours, (A2/2.131), which is consistent with the custody record. According to that custody record, at 18.29 hours the circumstances are being given to the custody sergeant (A2/2.126); at 18.34 hours, ‘rights are given’, (custody record A2/2.127); the printout from the breathalyser procedure starts at 18.43.43 and ends at 18.48.09 (A2/2.197); the custody record has entry that at 18.58 hours the detained person’s driving licence is examined for proof of identity, and the details are verified (A2/2.128); at 19.00 hours, according to the custody record, Mr Kirk is released from detention (A2/2.128).
9. Surprisingly perhaps, in light of certain observations in his pre trial witness statement of June 2009, and on occasion before then, at trial Mr Kirk did not pursue complaint or criticism of PS Lott in respect of this incident. I remind myself that just as Mr Kirk is a man who is capable of taking rapid offence with some people, he is capable of warming quickly to people; also, and without disrespect to him, he showed himself during the trial capable of being distracted by purely incidental details of interest to him. Here, he visibly warmed to Mr Lott when Mr Lott recollected he had his own dogs with Mr Kirk over the years, and when Mr Lott recalled a particular incident at Llantwit Major bypass which Mr Kirk had attended as police vet involving a Springer Spaniel.
10. Even so, if Sergeant Lott himself had detained Mr Kirk within the custody suite despite request or demand by Mr Kirk that he be released from the custody suite, I would have expected Mr Kirk clearly to remember this and put it to Sergeant Lott. In addition to describing Mr Lott in the course of his own cross examination as a “nice guy”, in his own cross examination of PS Lott he positively observed that PS Lott had dealt with him quickly and got him out of the police station in good time. I conclude firmly that there was no unreasonable or unlawful delay from stop until formal release from custody.
11. Was there unlawful detention after his formal release from custody? I turn to the allegation that there was unlawful detention after formal release from custody, in order that police officers could go to his vehicle and identify the registration number which they had omitted to record.
12. There would be nothing unusual or surprising in a motorist being served with an HORT 1 document at the police station, even if the breathalyser at the police station had shown zero readings. Also Sergeant Lott told me that it would not be uncommon, when a motorist was not going to be charged for a breathalyser offence, for officers to want to know that the motorist had insurance. If done outside the police station, or in another room, it would, he said, take a couple of minutes.
13. I do not find it implausible in itself that a police officer might neglect at the scene to take the registration number of the vehicle concerned, (as Mr Kirk suggests), and then cause a motorist to wait while it was noted down. Ms Biddle told me that it was some two and a half to three miles from Pontypridd Road to Barry Police Station (so that there would be delay if police officers went there and Mr Kirk was not allowed to go during such a check). On the other hand it is not obvious to me why it would be necessary for police officers to return to the car, and then back to the police station, as opposed to taking the motorist back to the car and noting the number for the purposes of an HORT form there.
14. The document at A2/2.163 appears to be the police notebook of Special Constable Lewis. The entry is dated 19.15 hours, suggestive that so far as this officer was concerned the incident was already completed, and in turn that there had not been detention of Mr Kirk for a significant time after his formal release from custody at 1900 hours. Where SC Lewis writes “when I observed a white Ford Escort index J755 KGA travelling in front of the panda”, one might wonder from the visual appearance of the middle line whether the “J755 KGA” has not been inserted later; ie whether this reflects making a note but then completing it by inserting the registration number only later, (consistent with Mr Kirk’s factual case that he was kept waiting at the police station for this to be ascertained). On the other hand, (i) neither Mr Kirk nor leading counsel for the Defendant has made any observation whatever on this and (ii) the entry is dated as 19.15, hours which would be more consistent with Mr Kirk already having been dealt with and already having gone on his way, rather than him being still at the police station.
15. It is the case that Mr Kirk made complaint very early of further detention: by letter dated 23 August 1999 to Superintendent Colin Jones he wrote “I was then illegally detained further whilst the arresting police officers drove back to the car I was driving left abandoned to take its registration number. Despite asking Lott for my immediate release, having produced my driving licence, I was further detained on the pretext that the police would wish to speak to me. When they eventually returned, I was told to bring my driving documents to a police station something I considered was yet another act of harassment” (A2/2.181-2).
16. By the end of cross examination and his own evidence, Mr Kirk’s case was that after being formally released at the conclusion of the breathalyser procedure, he was nonetheless kept within the custody suite at Barry Police Station for the officers to return and carry out the HORT 1 procedure; and he was kept there for some 30 to 40 minutes at that.
17. The evidence of Mrs Biddle before me was to categorically deny that she had delayed Mr Kirk’s release after the negative breath result, and as to a delay for her to get the car number, she said “I can’t recall that”. The evidence of Sergeant Lott was that Mr Kirk would not have been anywhere near the custody area when he had been released from the breath test, and that after the release from detention recorded in the custody book “It’s a busy area [the custody suite]. It’d be, “On your way please”.
18. First, if Mr Kirk was detained within the custody suite after being formally released from custody, and for 30 to 40 minutes at that, such would have been the responsibility of the custody sergeant PS Lott, and I would have expected Mr Kirk to be vividly alert to that, and to be resentful of the actions of PS Lott. On the contrary, as I have noted above, at the hearing before me Mr Kirk was complimentary of Mr Lott for processing him quickly and getting him out of the police station ‘in good time’ (see above).

**Identity of senior management was refused as to who ordered a further 30 min detention of their victim to allow police to return to the Appellant’s vehicle in the vain hope they may find or fabricate any defect to obtain justification of the original ‘stop’.**

**Why was the Appellant not immediately released after station breath test and taken back to the car when, instead, a purported ‘over looked recording of vehicle number plate needed rectification without him?**

**A blatant provable lie - Senior management had deployed a road traffic officer to inspect the Appellant’s borrowed car, in the Appellant’s absence, just as in the stayed ‘trading in machine guns’ trial also having failed to secure a successful prosecution.**

**This incident is all on the custody tape even now in the possession of the South Wales Police. The vast passage of time has caused the theft of the copy with the Appellant’s police station CCTV, a copy of which is currently held by police HQ Bridgend.**

**The Appellant was severely prejudiced throughout trial and especially noted by the learned trial judge in this particular incident due to the interminable delay owing to the malicious machine gun/MAPPA/brain scan conspiracies and many other fabricated but failed prosecutions by South Wales Police.**

1. Second, during the hearing before me Mr Kirk had been quite uncertain of the location of being served with the HORT 1 document or where he was required to wait, notably whether within or without the secure custody area. His memory of these events has varied. In cross examination of Mr Lott, he *later* put that “I was still inside the secure premises of the custody suite, but not in front of you…. I was taken to a room they started to issue an HORT and I said I’m going”; and at an earlier stage “Remember, I was kept for a considerable time after you released me, because they wanted to get the number of the car”, (Mr Lott’s reply being “I wasn’t privy to any of that”).
2. Third, I am alert to the fact that in the written complaint of 30.1.2000 Mr Kirk stated that “PS Lott refused to take details of my statement of complaint. BT [breath test] zero zero, I was subsequent refused to be released to allow PC Brown and PC Matthew Lewis to re-attend the scene and take details of my vehicles reg no [illegible word] Sergeant Lott had me physically detained until [illegible] (A2/2.185), yet in questions to Mr Lott during the hearing before me Mr Kirk was not suggesting that Mr Lott personally had him detained.
3. If Sergeant Lott himself had detained Mr Kirk within the custody suite despite request or demand by Mr Kirk that he be released from the custody suite, it is inherently likely that Mr Kirk would have remembered this clearly and thus would have put it to Sergeant Lott. (Mr Kirk is not and was not shy to put allegations to police witnesses).
4. Fourth, the earliest witness statement of Mr Kirk which I have is dated 19th May 2002. This relates the stop at the roadside and then “[Para 51]. I then hurried them along to get me to the machine in Barry and I took the time and I did the second breath test around about 20 minutes after this test which gave a zero reading. I wrote the following day for the records to be kept and for the video of the matter taken at the police station to be kept (A2/2.117D-E)”. This does not say anything of being detained within the custody suite, or being detained for a further 30 or 40 minutes.
5. Fifth, it was not suggested by Mr Kirk that the custody log had been fabricated or fraudulently altered. The log has entries at 18.53, 18.58 and 19.00, respectively entering the negative breath test, the detained person’s driving licence being examined for proof of identity, and release from detention. The total time in detention is recorded as 0 hours 20 minutes (A2/2.128).
6. No doubt Mr Kirk was agitated to go once the breath test showed zero. Mrs Biddle herself, asked by Mr Kirk whether there was anything untoward in his conduct, replied “as in my statement, you remained fairly silent, and once you had the breath test result you were very agitated to be released. I can’t [remember anything untoward in your conduct]”. But as the evidence of other occasions demonstrates, Mr Kirk was not a man to hesitate to demand formal procedures or to do other than make an almighty fuss if he thought they were not being followed. I consider it more probable that he was released from the custody suite itself and was asked by PC Brown as she then was to wait for the HORT 1 procedure to be completed. There is a ring of truth about Mr Kirk’s protestations that he was asked to wait while his vehicle registration number was identified, but it would have taken very little time at all for the officers who had arrested him to return to the car, if that is what they did.
7. In any event the pocket book entry of PC Brown has a short entry at 19.00 hours reporting Mr Kirk for “fail to produce your documents, certificate of insurance and MOT test certificate; “I’m also reporting you to fail to comply with a red traffic signal”, cautioned, to which he made no reply”; and a much longer entry timed at “19.15” reciting the incident commencing “at about 18.15 hours on Sunday 8th August 1999…”.
8. Neither PC Brown nor Mr Kirk was asked, or volunteered, by what means Mr Kirk returned to his own car where it had been left locked at the road side. Therefore I do not have any such background material to assist me in reaching a conclusion on the facts. Nonetheless, I have noted above the timings in the pocket notebook (which appears to be that of SC Lewis) and which is timed as being written at 19.15.
9. On weighing the whole of the evidence, I think it improbable that Mr Kirk was detained for 30 or 40 minutes in the custody suite following the zero zero breath test and the formalities thereafter and I consider that Mr Kirk’s memory is fallible on this point.
10. In oral evidence, Mr Lott said that when Mr Kirk entered the custody unit he was demanding a solicitor be present, but later it is clear that Mr Kirk elected to take the breath test procedure and eg to produce his driving licence without requiring a solicitor be present. There is no suggestion that at a later stage he demanded a solicitor be present.I find on the balance of probabilities that he was released from detention formally at 19.00 hours and was then released from the custody suite, and that he had left the police station by no later than 19.15. Accordingly, there was no unlawful detention after his formal release from custody.

Para 769 However what is this "unable to assist the CPS" nonsense, it is her duty to do so?