**Action 3 4.1 Audi Estate Car stopped 13 December 2001 Merthyr Mawr Road, Bridgend**

**‘no claim for prolonged or unlawful detention’!**

**Was it not obvious, by now, each time as being taken for granted?**

**And that this typical incident was yet another annoyance, ‘fishing for a prosecution for promotion’, requiring a criminal and ‘overarching’ investigation by an outside police force which, incidentally, is still being refused?**

1. **Action 3 4.1 Audi Estate Car stopped 13 December 2001 Merthyr Mawr Road, Bridgend**. The pleaded case is, “On 13 December 2001 the Defendant, in Bridgend, maliciously and without reasonable or probable cause arrested and detained in custody the Claimant on motoring allegations”, all charges being withdrawn at Bridgend Magistrates Court on 30 May 2002; and complaint is made that the Defendant “again” refused to release the custody records including the overhead video in the custody suite at Bridgend Police Station.
2. It was PC2866 Clive Barber who dealt with Mr Kirk at the scene. He followed Mr Kirk’s Audi into the grounds of a doctor’s surgery and parked the police car directly behind the Audi. It was PC Barber who arrested Mr Kirk and took him to the police station, on the basis that he had not provided his name and address for the purposes of serving an HORT1 form as to motoring documents. It was (the then PS732) Simon Davies who was the custody sergeant at Bridgend Police Station.
3. The pleaded Defence is that PC Barber observed the Audi motor car with a number of defects, stopped the motor vehicle and spoke to the driver later identified as the Claimant. “The officer asked the Claimant whether he owned the motor vehicle to which he replied, “No”; the officer asked the Claimant to provide his name and address; the Claimant refused. The officer repeated his request on a number of occasions, but the Claimant still refused to provide the information. The officer then arrested the Claimant using his powers under Section 25 of the Police and Criminal Evidence Act 1984. In the premises, the officer was lawfully entitled to carry out the said arrest. The Claimant was taken to Bridgend Police Station where he provided information relating to his identity. Once this was verified, he was released from custody. He arrived at the police station at 12.25 and was released at 12.36”.
4. Mr Kirk’s witness statement dated 19 June 2009 adds no further detail to the pleaded case: “760. I was stopped by police and accused of driving an un-roadworthy car and prosecuted for no insurance. Made to produce documents. 761. Summons for offences. 762. In court the CPS withdrew the summons” (A3/4.129B). (The statement purports to attach another statement, but does not do so).
5. It is clear that Mr Kirk made complaint about this incident very early. Thus by letter of 17 December 2001, 4 days after the incident, he wrote to South Wales Police requiring copies of all his custody records “to include all videos and tapes, created on Thursday 13 December 2001”; and by letter of the same date, he wrote to Chief Inspector Gosling of South Wales Police to make complaint: “Further to my previous complaints of harassment, I wish to make a complaint regarding my illegal custody, details of which are attached” (A3/4.151) and he attached the statement which is at Bundle A3/4.152.
6. In it he says that he was followed by a police car “long enough to work the PNC”. After he parked in his surgery car park, the policeman approached him and asked various questions, saying that “he detected alcohol on my breath and demanded a breath test, which was negative…..

“I was arrested and handcuffed on the pretext that I would not identify myself. At the police station there was a steady stream of police officers that came in to observe, shuffling papers at the desk and then leaving the room, this included an Inspector. I was made to empty my pockets and was promised my custody records before I left. Several police officers repeatedly ignored my comments when I said my details for the record are identical to the last time I was in the police station. They continued to pretend that they did not know who I was. I was refused the right to see what was on the computer screen but had sufficient view before I was moved to realise that the custody sergeant already had my record. Later he inadvertently stated, when I appeared to be slow in acting on their orders [explained orally by Mr Kirk as the requirement to empty his pockets] ‘*You know the system Mr Kirk, you’ve been here before’…* I was then told to put all my belongings back into my pockets and was escorted to the outside foyer. During my arrest I was ordered to produce driving documents, which I considered was yet another illegal act. I was refused my custody records as was the case when South Wales Police last illegally detained me in August 2000”.

1. The legality of initial arrest. As to what was done and said at the scene, there is comparatively little in issue between Mr Kirk and PC Barber who arrested him. The police officer says that he noticed that the front and rear bumpers of the Audi were held on by some kind of strapping. The HORT1 which PC Barber completed later, at the police station has his handwritten entry as to the code and defects found, namely “front bumper fixed by strapping rear bumper fixed by strapping” and the pro forma statement on the reverse of the HORT1 states “both front and rear bumpers were hanging off – being held in place by small straps (dangerous [illegible word])”
2. (A3/4.158-9). In oral evidence, Mr Kirk agreed that the bumpers were tied on by strapping, saying “They would have been legal, yes”.
3. The evidence of PC Barber was that Mr Kirk got out of the car and walked towards the surgery, he called to Mr Kirk who ignored him, he ran and caught up with Mr Kirk who started to walk back towards his car still ignoring him. In oral evidence Mr Kirk did not remember the detail, but said that the surgery must have been closed. The evidence of PC Barber was that he spoke to the driver saying, ‘Excuse me sir but is that your car there’, and Mr Kirk replied “It could be, I don’t know”; he said “Well is that your car or not?” and Mr Kirk replied “I don’t know”; Mr Kirk got back into the car and started to close the door but the police officer took hold and held it open saying, “Excuse me but I want to establish if this is your vehicle”; and Mr Kirk said “Get out of my way and move your car now”. PC Barber: “Will you please answer my question?”; Mr Kirk: “You’ve had enough time to check out the car on your computer while following me”. In oral evidence Mr Kirk did not remember the detail, but he was “not going to say it wasn’t said”.
4. The evidence of PC Barber was that next Mr Kirk started the engine, so he turned the engine off reached into the car and could smell “what I thought was alcohol on his breath”, and required of him a breath test which Mr Kirk indicated he was not going to give; PC Barber said, “Well I will have no choice but to arrest you”; Mr Kirk replied, “Well I won’t, so just move your bloody car”. In oral evidence, other than as to the expletive, Mr Kirk said “it sounds like me”.
5. The evidence of PC Barber was that because he could smell alcohol, he placed handcuffs on Mr Kirk, cautioned him, took him to the police car, that Mr Kirk interrupted by indicating a willingness to give a sample, which he gave, negative, and PC Barber immediately removed the handcuffs from Mr Kirk’s wrists. In oral evidence, save that he added there was a lot of radio traffic, Mr Kirk did not dissent, saying “Yes, I’ll run with that”.
6. Next, the evidence of PC Barber was that in the patrol car he required Mr Kirk to give his name, in order to provide him with a slip to produce his documents within 7 days at a police station of his choice, but was ignored; he said to Mr Kirk “are you going to provide me with your name and address please, because if you don’t, I will have to arrest you under section 25 of PACE because I have no address for service of a summons if needed, so can I have your name and address please?”; Mr Kirk refused to supply his details and “just kept looking at me with an aggressive stare”. He then arrested Mr Kirk. In oral evidence, Mr Kirk agreed that the police officer had de-arrested him following the negative breath sample. As to the HORT 1 conversation, “I cannot argue with that, I can’t remember”. According to PC Barber during this conversation Mr Kirk said, “You know my bloody name, so just get on with it, I want to go”, and “Check on that bloody computer, my records are on there, you know who I am”.

**PC Barber was not in a patrol car and was PC Barber in uniform?**

1. In his witness statement and in oral evidence PC Barber said that he had not met Mr Kirk before and did not know who he was. This was not challenged by Mr Kirk in questions to Mr Barber, or in Mr Kirk’s own oral evidence to the court. Mr Kirk did tell me “I know I was getting a little bit annoyed, I’d not long been in the police station”. At first Mr Kirk told me he would have given his name, although not an address, but in answer to leading counsel for the Defendant he said, “I’m not [confident] that I gave my name”.
2. As this demonstrates, there is very little difference in the account given by Mr Kirk and that by PC Barber as to what happened at the road side.
3. Thus Mr Kirk is clear that he would not have given an address to the police officer at the scene. This was a traffic patrol officer, attached to Police Headquarters Bridgend. Mr Kirk does not suggest that this police officer had had any dealings with him personally before. At the scene Mr Kirk was suggesting to him that he did know Mr Kirk’s name, but on the basis of checking the vehicle on the Police National Computer. According to PC Barber, he replied, “With all respect, I don’t know who you are and I’ve never before, have you ever met me?” without response. This exchange was not challenged by Mr Kirk, in cross examination of PC Barber or in his own oral evidence. Nothing else emerged to suggest that PC Barber knew of Mr Kirk prior to this incident and the unchallenged exchange of question and answer at the scene was that he was asking of Mr Kirk a name for address for service of a summons if need be, consistent with proceeding to arrest of Mr Kirk under section 25 PACE.
4. It is common ground between Mr Kirk and PC Barber that the bumpers were held by strapping. The condition for arrest under section 25 PACE is not that an offence “*has*” been committed, but rather that “Where a constable *has reasonable grounds for suspecting* that any offence which is not an arrestable offence has been committed….. he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied”.
5. One of those conditions is that the name of the relevant person is not known to, and cannot be readily ascertained by, the constable, and another condition is that the relevant person has failed to furnish a satisfactory address for service. It seems to me that in this case the Defendant has established both conditions in (i) reasonable grounds for suspecting an offence had been committed and (ii) Mr Kirk having refused to give his address to a police officer who had not ever met and did not know him. Thereby there have been shown lawful grounds for arrest.
6. Soured by his frequent contact with the police, and by the behaviour of police officers as he saw it on other occasions, (including that of PC Kihlberg on 8 September 2000 in Church Street Barry), Mr Kirk was by the date of the present incident convinced that any approach to him by a police officer was motivated by spite or malice. He has not shown, on any balanced and objective view, that this was so of PC Barber in the case of the present arrest.
7. Legality of his treatment after arrest. On arrest, Mr Kirk was taken to the Bridgend Police Station. The custody record shows 12.24 as the time when the circumstances of arrest and grounds for detention were related to the Custody Sergeant (A3/4.149a). Mr Kirk was released from detention at 12.36, according to that record (Bundle A3/4.149c). It is thus a short period that he was there detained. Mr Kirk in oral evidence agreed that matters were dealt with “quicker than normally, I’ll run along with that”.

**The old ruse to ‘smell alcohol on breath’ for a breath test to stall for time for yet more orders over the radio desperate, no doubt, as PNC over previous twenty minutes had already identified for HQ, the driver’s name and current address.**

**As soon as the Appellant entered the police station in handcuffs it was obvious that he was immediately identified and addressed by several by quoting his name.**

**The handcuffs were not taken off until senior management was further consulted despite already having, from PNC by the following car, identification of the driver and address of his residence.**

1. There is a conflict of evidence, between Mr Kirk and PS 732 Simon Davies the custody sergeant on duty at Bridgend Custody Unit when Mr Kirk was brought in. Mr Kirk’s evidence is that the police at the station knew who he was, that several police officers repeatedly ignored his comments when he said his details, for the record, were identical to the last time that he was in the police station, that he was refused the right to see what was on the computer screen but realised that the custody sergeant already had his record, and that later the custody sergeant “inadvertently stated”, ‘You know the system Mr Kirk you’ve been here before’. Within a short time of this incident, Mr Kirk was asking in correspondence for disclosure of the custody suite video, (letter 17 December 2001 Bundle A3/4.150). It is this asserted exchange which appears to have been in Mr Kirk’s mind in pursuing disclosure of the video: see his letter dated 27 February 2002, “I refer to my letter of 17 December requesting copies of all my custody records, to include all videos and tapes created on Thursday 13 December….. I am not yet in receipt of the videos and tapes. Why is this…. when told to empty my pockets the Custody Officer PS 732 Davies, *forgetting he was being tape recorded* quoted ‘you know the system Mr Kirk, you’ve been here before’” (emphasis supplied, Bundle A3/4.153).
2. He still pursued the theme when the summonses were discontinued at the magistrates’ court on 13 May 2002. In correspondence Mr Seculer, Clerk to the Justices at Bridgend Magistrates Court confirms to Mr Kirk as requested that the clerk to the magistrates heard prosecuting counsel inform the court that “You were not arrested *for these offences* and could not therefore have custody records” (emphasis supplied, Bundle A3/4.155).

**Gross Abuse of Process and everyone in police station and crowded court knew it. Hand cuffs on suggest an arrest requiring custody records to be kept and disclosed.**

**Of course the Appellant was never getting the custody videos, it proved yet another conspiracy by identifying and hearing officers in both the foyer and custody suite, saying, “hello, Mr Kirk”, as they walked by with the first before he had gone through the front door!**

**These police were the very same ones who had been present in similar blunders, attempting to wriggle around a positive breath test at road side and 5mg/ ml of blood 20 minutes later. See para 901** A**ction 2, paragraph 12 stop of Ford Escort on A473 near M4 Pencoed Junction on 16 August 2000**.

1. PS Davies (now DS 732) in his own witness statement confirms that at 12.24 hours that day, having listened to PC Barber’s account of the arrest, “I made the decision to detain Mr Kirk and I endorsed the custody record as follows “DP has been arrested under sec 25 PACE. Circs are DP was seen driving a silver Audi motor car index number H565 RUJ on A473. He eventually stopped his car and was spoken to by OIC with regards to defects to his vehicle. He was asked if owned the vehicle he stated “No”. He was then repeatedly asked to provide his name and address and refused. The OIC was unable to report the DP for the service of summons and he was the (sic) arrested (witness statement paragraph 7 Bundle A3/4.147 and A3/4.14ssued as 149a).

**No defect rectification ticket was ever issued as Barber was believed not to be qualified to have issued it as he ‘examined it’ when not even in uniform, a road traffic officer but still the custody sergeant processed to generate the equally farcical magistrates hearing.**

1. The custody record states that:

At 12.24 detention was authorised by PS 732 Davies, relating the arrest under section 25 PACE Act 1984, (ie here, want of any name or address) as “I authorise the Detained Person’s detention as being necessary until the relevant arrest condition no longer applies or until the Detained Person is charged with the offence”.

At 12.25 hours PS Davies endorsed the custody record that Mr Kirk showed no visible signs of injury; and it is recorded that he declined legal advice but asked that a person named Diane be informed of his arrest.

At 12.29, the entry in the custody record reads “the DP’s identity has been verified and he will no longer be detained”.

At 12.36 (but see below) there is the entry “released from detention”, having been issued with an HORT 1 and VDR (Vehicle Defect Report) by PC Barber, is recorded as refusing to sign for his rights, and as refusing to assist PC Barber in the details he required for completion of the HORT 1 (Bundle A3/4.149c).

1. It is clear that the detention of Mr Kirk for any period at the police station was predicated on his identity not being known. Thus PS Davies says in his witness statement, “At 12.29 hours Mr Kirk’s identity was verified and I have endorsed the custody record to the effect that he would no longer be detained”; and he says that Mr Kirk’s identity was verified by PS Davies because “I thought I recognised him from a previous matter I was partly involved in. An officer on my shift had previously arrested Mr Kirk and I had seen him briefly in the custody unit. When he arrived at the police station in respect of this matter it triggered my memory and I made an immediate search of the custody handling system, which enabled me to see a photograph of him and to confirm his identity” (paragraphs 10, 13 and 14 Bundle A3/4.148).
2. In oral evidence Mr Davies told me that the other incident was when Cheryl Rewbridge had occasion to deal with Mr Kirk to arrest him and bring him in for a road traffic matter (presumably that of 16 August 2000, the subject of Action 2 paragraph 12 involving a Ford Escort being stopped by PC Rewbridge close to the Pencoed junction with the M4). I take into account that this was 16 months before, and that he told me that in respect of this incident he was an outside Sergeant who played no part in the incident itself at all, simply remembering seeing him in custody. In cross examination by Mr Kirk, PS Davies told me that what he needed to satisfy himself as to whether the detention was legal, that Mr Kirk’s identity was required, and that once he identified who he was there was “no longer reason to detain you”.
3. If the documentary and witness evidence were no more than this, it would not be easy to resolve whether Mr Kirk or Mr Davies was correct in the account given. However Mr Kirk’s evidence does not stand alone. In oral evidence, PC Barber told me “I believe it was Sergeant Davies who identified him. The Sergeant just said, ‘Oh Mr Kirk, how are you?’; and later, ‘…*when we walked in,* he said Hello Mr Kirk how are you?’ (emphasis supplied). This answer that the custody sergeant said ‘Hello Mr Kirk’ when they walked in was given by PC Barber at two separate points in his evidence. Mr Barber was clear that if he had had Mr Kirk’s name, and a business address, “it would have been satisfactory to me, Yes. Q. And satisfactory to the custody sergeant? A. Yes’.
4. It is also evident that after this, Mr Kirk was in fact willing to give his details to Mr Barber, for the HORT 1 form, Mr Barber indeed remembering the way in which he gave his date of birth “12345” something which stuck in his mind. So far as Mr Barber was concerned, Mr Kirk had not done so before.
5. The HORT 1 form, and subsequent summons dated 10 May 2002 were in respect of MOT, insurance, and vehicle defect. Notice of Discontinuance of any charges was given by letter of 29 May 2002 immediately before the date set for hearing of the Magistrates Court in Bridgend on 30 May 2002. The reason for the decision by the CPS was that there was ‘not a realistic prospect of conviction’ (A3/4.163, letter, and internal pro forma at A3/4.166). By comparison, the pro forma as to reasons for discontinuance were “as discussed with Inspector Stroud”, apparently on 20 May 2002 (entry of 29.5.02 A3/4.166 and confirmation of discontinuance to the police A3/4.167). It is opaque to me what discussion there may have been. As to insurance, given the string of cases where ultimately insurance cover was clarified, Mr Kirk’s unorthodox approach to insurance, (to put it rather generously), may have played its part. The standard of knowledge on the part of those dealing with the case and the CPS is not reassuring: see internal note 30/5/02 of the appearance at Court number 1 Bridgend Magistrates Court, “Mr Kirk queried his arrest. I told him he had not been arrested for these offences, and there was no custody record in respect of these RTO’s” (A3/4.168). However I do not find it possible, to draw any reliable inference from this to the disadvantage of PC Barber’s evidence, not least given his straightforward account of recognition of Mr Kirk on arrival at the police station.
6. There is no indication that video tapes were ever supplied to Mr Kirk, or of a principled reason being given to refuse disclosure. I thought it proper to remind Mr Kirk, when he gave oral evidence, of the relevant documents and his own enquiries, but there was not placed before me material which would have justified or made proper any further descent into the arena on my part to explore non-disclosure. Mr Kirk did not pursue this in oral evidence.

**Evidence was given that the Appellant was not getting his custody records as in more than 18 other times custody records have been applied for**

1. So far as the custody sergeant is concerned, I have no doubt in preferring the recollection of Mr Kirk that he was recognised straight away on entering the police station, supported as it is by the evidence of PC Barber. It may reasonably be thought that Mr Kirk had brought it upon himself that he was arrested and taken to the police station in the first place, in declining to give his name and address; I am satisfied that PC Barber was simply going through a routine traffic patrol officer’s sequence of actions.
2. The pleaded case includes unlawful detention [“maliciously and without reasonable or probable cause arrested and detained in custody the Claimant on motoring allegations”]. There is on the face of the custody record a detention, albeit of only 12 minutes at the most (1224 at custody sergeant’s desk, “12.36” the entry as to release). Mr Kirk complains in his witness statement of detention by PS Davies despite, and after, recognising Mr Kirk. It is for the Defendant to justify detention and even if detention were only 12 minutes a court should be slow to accept any argument that such a period of detention be dismissed as *de minimis*.

**The detention time started the moment Appellant was spoken to at the doctor’s surgery**

1. If one takes a superficial view of the custody record, it shows an entry “released from detention” at 12.36, and this is only after (at 12.25) medical assessment questions, (at 12.27) “rights have been read”, and (at 12.28) on intimation of arrest the detained person has requested that another person be notified of their arrest. On this superficial view, Mr Kirk is detained for some minutes after his identity is confirmed. Closer attention shows that in fact, the intimation of arrest was given at 12.28, his identity was verified at 12.29, and he was in fact released at 12.32, (The full entry for 12.36 reads “Released from Detention. Date of release/Temporary absence 13122001 12.32 Total time in detention 0 hrs 11 mins”. Reason for release REPORTED FOR SUMMONS” A3/4.149c). The time of arrival at the police station was 12.21, recorded at A3/4.149a). Hence the entry of 11 minutes.

**The Appellant rests his case**

1. In turn, the custody record demonstrates the strongest of probabilities that the custody sergeant consulted some record, in order to place an address on file. It was not sufficient to know Mr Kirk’s name. The address was the key to bringing the arrest and detention to an end, since the reason for arrest was, as recorded at 12.24, under section 25 PACE (ie no verifiable address for service of summons). Mr Kirk had not been forthcoming with his address Yet the custody record states it (“Personal Details Kirk, Maurice John, 49-53 Yt Newydd Road, Barry … Veterinary surgeon” A3/4.1449a).
2. The reality appears to be that for 4 minutes from 12.24 the custody sergeant is processing simple “paperwork” details which had to be processed on presentation of any detained person to him required (no visible injury, any medical illness or injury? Rights, a request by the detained person) and it is at 12.28 that the nub is reached (“Intimation of arrest”). On doing so, at 12.29 Mr Kirk’s identity is verified. (The custody sergeant could see it when he walked through the door). By 12.32 Mr Kirk is released. He was evidently served with the HORT1 at 12.33 immediately afterwards. In truth, after the necessary paperwork for any detained person, it is 3 or 4 minutes until Mr Kirk is released. I can understand that Mr Kirk experienced prior inconvenience and frustration in being taken to the police station at all but I consider it would be artificial to categorise this period as one of actionable unlawful detention.