

Action 2 paragraph 5 speed camera St Nicholas 2.10.1997.

Facts referred to in this judgment are contrary to the facts in the case

FACT: These fabricated criminal allegations again required Inspector Andrew Rice to deny incidents as ‘never occurred’. The Appellant was prosecuted for ‘speeding’ in a veterinary practice vehicle whilst not the driver already known to be the case by both police and HM Crown Prosecution Service.

FACT: Inspector Rice’s version of accounts, as in paragraph 314, (see paragraph 262 Action 1 claim 8.11 3 October 1993 at St Athan stop and arrest for driving whilst disqualified) is also quite untrue as when he described this earlier motoring case’s police and court records. First the Appellant was convicted, in his absence and then, again in the Appellant’s absence, the conviction was over turned.

FACT: The Appellant was denied access to either police or court records relied upon to, first, obtain a successful prosecution and then, second, be made ‘aware’ the conviction was over turned.

It stinks, doesn’t it, demonstrating once again the thread of deception and injustice for these civil proceedings by a motorist again being ‘stitched up’ out of spite.

FACT: Throughout most of these incidents the South Wales Police knew the Appellant was never ever going to get incriminating HM court, HM CPS or police records from any South Wales establishment.

FACT: Inspector Rice had, also in evidence, with Christopher Ebbs alias Alexander present in the room, deny identifying him or having been at the Aust ferry cafe meeting, with Mr Alexander, CAA and Bristol police (involving an Appellant assault conviction, subject to appeal, in an incident in the Plume of Feathers public house, Bristol public house to discuss that and flights to Ireland.

FACT: The driver of the van, Kevin Fairman, was called to give evidence and without warning to anyone stated he was routinely stopped by police believing him to be the Appellant when driving any of the now Appellant’ recognised vehicles. No explanation was given or inspection of the vehicle other than police admitting they believed in was the Appellant who had been driving.

FACT: Kevin Fairman indicated he was stopped more by Barry police in the Guernsey registered Acti van, see-paragraph 684 below, assumingly because all side windows had been previously deliberately ‘blacked out’ by the Appellant and leaving only a small slit across the windscreen, for legally requirements.

FACT: Both police senior management and their lawyers, Dolmans, had been lying through their back teeth for years with their collective denials of the very existence of the Appellant’s veterinary ambulance featuring in this ‘speed trap’ fabrication.

FACT: The selection of ‘mysteriously now found’ police photos, (see- Action 1 claim 8.23 May 1995 The vet ambulance), of the Appellant’s untaxed with no MOT parked on a double yellow line, over night, veterinary ambulance, outside his veterinary surgery, were originally taken to allow PC O’Brian and all other circulating police officers, should they see the Appellant and no one else driving, to have the excuse to stop him and attempt to identify their victim’s latest insurance company to harass

At the summary hearing therefore some FACTS also not in this judgement:

- i) Inspector Rice would not call the operator of the camera at the incident**
- ii) but prosecuted the Appellant when knowing he was not the driver**
- iii) had assisted in the earlier Barry magistrates hearing despite having already supplied HM Crown Prosecution Service’s Mr Sofa with two contrasting photographs name and address of the actual driver, Kevin Fairman.**
- iv) Had confiscated the CPS court file , to shred, with all parties in the court room intently looking exactly as he had done or Sergeant Hill had done following the collapsed ‘smuggling pigs flight to Ireland’ case.**
- v) Mr Stoffar subsequent arrest, for ‘perverting the course of justice’, was now further supported by the incriminating clear photograph of the driver that had fluttered so gently to the ground from his CPS file.**
- vi) The case was immediately abandoned for all trace of the hearing to be ‘expunged from the record’ as a lawyer said at the time in 2006 as. this is exactly what Texas’s State Psychiatric Prison’s court did to avoid the publicity.**
- vii) The Federal Aviation’s Authority’s speedy intervention, by a ‘wrap over the knuckles’, was kept from all the American newspapers just as the CAA’s repeated complaint of these Welsh police, in Actions 2 paragraph 2 flight to Ireland 9th February 1996 and Action 2 paragraph 7 – 4 July 1999 the police helicopter.**
- viii) Until the South Wales Police had intervened by fabricating a PNC record coupled by erroneous psychiatric information to Austin’s police and repeating themselves in 2009, over a machine gun incident, all knew that at no time had the Appellant broken any FAA legislation while landing his cub next to the President’s ranch. He was simply carrying a letter thanking GW, personally, for causing this Appellant’s life from being saved from the Caribbean sharks by Julie, the pilot and one of his Coast Guard helicopters.**
- ix) So, again, as if it was a figment in the imagination of the Appellant this is another court process that just never happened triggered by the clerk of the court’s 10 am fax to the Appellant, signed J Caress and**
- x) along with at least five other officers he was last seen escorting away Mr Swaffer, in handcuffs, with the CPS file neatly tucked under his arm, to make, no**

doubt, the yet undisclosed but detailed MG11 statement as to ‘what the magistrate saw’.

- xi) Stipendiary magistrate, Ms Watkins may well have been an eye witness to the other similarly collapsed hearing, see paragraph 430 Action 1 claim 8.23 May 1995 The vet ambulance but definitely in the ‘smuggled pigs’ fiasco case all to have the Appellant’s name removed from the veterinary register.**
- xii) This incident supports the view to an overarching MAPPA type 24/7 surveillance conspiracy, along with the many yet to be heard ‘stayed’ damages actions, currently protected by HMC&TC, as in the current appeal by JR in the Royal Courts of Justice and Supreme Court, if need be, of no ‘restraining order’ having ever been served on their victim, in the 1st Dec 2001 Cardiff magistrates’ cells to then maliciously used to gaol him, for years to further prejudice his preparation for these civil proceedings.**
- xiii) As for any other witnesses, from the two crammed full vehicles, dispatched by Inspector Andrew Rice with all sirens blaring across the town, none, it appeared, could be identified**
- xiv) Despite many years of both CPR and FOI act applications none of these three collapsed hearings nor that of 1st Dec 2011 ‘harassment’ conviction, when CPS switched exhibits mid-trial to be confiscated by Cardiff police to prevent the Appellant access to them in subsequent trials have disclosed no contemporaneous notes of evidence or identity of any used exhibits.**

683. **Action 2 paragraph 5 speed camera St Nicholas 2.10.1997** On 2nd October 1997 a speed camera snapped a Ford Escort Van D821 LNY travelling apparently above the speed limit of 30mph. This is not disputed. The monitor on the speed camera showed 44mph to the police officer operating it. A Notice of Intended Prosecution was sent to Mr Kirk as keeper of the vehicle requiring him to identify the person driving the vehicle on this occasion.

684. Vehicle 43083, the vehicle on this occasion, was a Honda Acti Van. This vehicle ricocheted between registered keepers by November 1989 respectively Mr Kirk, Mrs Janet Kirk, Mrs Marianne Fanshawe and Mr Kirk again, all in Guernsey (“green” bundle pp 34–36). A theme of Mr Kirk’s evidence is that vehicles were being stopped because his name appeared as the registered keeper to police search; but it is not challenged that on this occasion the vehicle in question travelled through the speed camera at 44mph in a 30mph zone.

How on earth could the Appellant have known what speed either of the vans had been doing? The police barrister would not call or cross examine on it in this civil trial as that would of liberated a whole new fragrance of corruption into the court room as yet another new ‘can of worms’ is opened.

685. It appears to have been processed in the ordinary way by the Central Ticket Office, without fault in the process itself. It is not disputed that the Notice was sent in proper time (see notice itself dated 13.10.1997 at A2/2.20, and his letters of 21.7.1998 and 17.9.1998 at A2/2.38. A summons was issued on 27.4.1998 within the required 6 month period for

excess speed and for failing to give information identifying the driver (A2/2.29, 31). Mr Kirk in fact pleaded guilty, “to save time”, but in mitigation said he was not driving and the Magistrates restored the matter to be tried at a hearing on 1st June 1998. On that occasion, the prosecution withdrew the prosecution (see A2/2.36 and 41 – 42). A letter from the CPS dated 28 September 1998 states that, following the adjournment of the case on 27 April 1998, “the case was further reviewed by a member of the Crown Prosecution Service. In view of the quality of the photographic evidence the Crown took the view that the case should not proceed against you in relation to the speeding offence” (see A2/2.42).

686. The pleaded case is that the prosecution was instituted and continued by police officers maliciously and without reasonable and probable cause, in that they knew that Mr Kirk was not the driver of this car at the time of the alleged traffic offence and there was no evidence that he had committed the offence (A2/2.1). His case is that the driver was his employee Kevin Fairman.

687. The Defence, after further particulars of the date and occasion, served a witness statement from PC Lovell dated 3.11.2009, which simply records the date, time, vehicle registration number, and checks as to system, and that PC Lovell on that day sealed the video cassette and forwarded it to the Central Ticket Office at Treforest in the normal way. It did not identify or describe the driver. Mr Kirk declined repeated offers to call him for cross examination.

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688. A copy of the photographic evidence from the video camera was sent to Mr Kirk: by letter of 11 November 1997 to the Central Ticket Office, he asked for a copy of it (A2/2.21); by letter dated 9 December 1997 he wrote again stating “I refer to my letter of the 11 November and your response thereto enclosing a photograph. I am able to confirm that the driver is not me but I cannot confirm his/her identity” (A2/2.23).

689. By 21 July 1998 Mr Kirk was writing both to the police and to the Office for the Supervision of Solicitors that “on receipt of the Notice of Intended Prosecution I wrote several times to the South Wales Ticket Office and my letter of the 10 March identified the driver, and his address who was well known to the Barry police as my employee”. By the time Mr Kirk was making a witness statement for the purpose of the present proceedings he was asserting that “in October 97 the police summoned me for speeding despite the fact that to the police’s knowledge I was not the driver. The camera photo clearly identified Fairman. Therefore the summons and trial were motivated by malice..... The police never even approached Fairman despite the fact that I told them in writing at the earliest opportunity that he was the driver, not me, and therein lies why I say it was harassment and malicious” (witness statement 19 May 2002 A2/2.3D); he repeated this in his 2009 statement (paragraph 647 A2/2.3B).

690. In fact what he had written to the police was, “One of my staff has suggested the driver *may* have been a Mr K Fairman of 52 Tynewydd Road, Barry. Without sight of the original film I am in some difficulties.” (A2/2.28, emphasis supplied).

691. By letter dated 21 January 1998 the police had written in reply that Mr Kirk had failed to establish the person and invited him to view the film at the Central Ticket Office which

might assist in the identification process adding “I should point out that it is the responsibility of the registered keeper to supply such information” following a police request and “if you wish to view the film would you please contact this office on the above telephone number when the necessary appointment can be made” (A2/2.25).

692. Mr Fairman was called as a witness before me. He had a worried look throughout; he had an uncertain memory. His written statement said that in 1995 he was stopped by Barry Police “at least three times” and made to produce his driving documents while driving Mr Kirk’s Guernsey registered van”, whereas orally before me he did not remember three occasions “I can only remember one occasion I was stopped”. (In fact, he was stopped three times, on 14.08.1995 in the Honda Acti van, see HORT 1 at Mr Kirk’s green Bundle 33; and on 23.08.1995 and 22.9.1995, see letter from South Wales Police 24 January 1996 Mr Kirk’s “green” bundle at 43).

693. In my judgment the driver may well have been, and probably was, Mr Fairman. In a statement made during the currency of the hearing before me, Mr Fairman stated that in 1997 he was employed by Mr Kirk and was driving one of his vehicles through St Nicholas to cause him to receive a speeding ticket (“second statement” in Mr Kirk’s additional, “green”, bundle). In oral evidence, he told me that he had no dealings with the police, it was all dealt with by Mr Kirk; he could not remember being shown a picture of the person from the speed camera; and he did not remember the camera flashing but he remembered “the situation of it all. [Mr Kirk] must have said that I picked up a speeding ticket, it would have been the little white van I used to drive”.

694. However it is clearly not the case that Mr Kirk “told [the police] in writing at the earliest opportunity that [Mr Fairman] was the driver”.

695. Strictly in law, he was required to identify the driver within 28 days of service of the Notice of Intended Prosecution (which was on or about 13 October 1997). It would have been open to the police to lay an information, for summonses to be issued, by late November 1997 if Mr Kirk had not identified the driver by then.

696. In fact, he asked for a copy of the photographic evidence by letter dated 11 November 1997 and expressly stated, having seen the photograph, to the police that as to the driver he could not confirm “his/her identity”. By 10 March 1998, five months after 2 October 1997 and over four months after expiry of the 28 day period, Mr Kirk was going no further than to say that one of his staff had suggested that the driver “may” have been a Mr K Fairman.

697. In view of Mr Kirk’s own difficulty with the quality of the photographic evidence there is nothing inherently improbable in the CPS having taken a view, (after 27 April 1998 when Mr Kirk had pleaded guilty), that the quality of the photographic evidence was such that the case should not proceed (letter 28.9.1998 A2/2.42). The decision to offer no evidence was taken before the court hearing, and before any representations or requests by Mr Kirk at that hearing (see fax Magistrates Court to Mr Kirk “the prosecution is withdrawing the case this morning – no need to attend Court” (A2/2.36)).

698. Mr Kirk has (or has developed) furious suspicions or belief of ill motive or conspiracy in relation to this particular incident. Those centre on the fact that at the hearing the CPS representative was someone who knew Mr Kirk personally and regularly met him, but he

would not produce the photograph to Mr Kirk, “he just withdrew the charge” (Mr Kirk’s statement of 2002 A2/2.3D). Remarkably, Mr Kirk physically seized Mr Stoffa the CPS representative and physically tried to wrest from him the photograph. “I therefore arrested the CPS Prosecutor, Stoffa. After a very long wait in the courtroom for the police, I handed him over by the scruff of the neck to the Police Sergeant, making it quite clear that I needed to make a statement of complaint and that they were to seize the CPS file before documents were shredded, as they had been in my previous cases when I’d made similar complaints.... The police refused to interview me concerning my complaint.” (A2/2.19 written statement of ?? 2002).

699. Mr Kirk identifies Police Sergeant 1581 Rice as having attended (together with a body of police arriving ‘under blue flashing lights’) and as having seized the CPS file. This would in itself not be relevant to the merits of having prosecuted this matter, but during the course of this hearing a Mr Christopher Ebbs (or now Mr Alexander-Ebbs) attended Court and purported to identify Inspector Rice as a police officer present at a meeting at Aust Motorway Service Station when Mr Ebbs alleged that Mr Rice applied pressure to him to “sex up” his allegations against Mr Kirk in relation to an incident at the Plume of Feathers Public House Bristol.

700. I deal with the evidence of Mr Alexander-Ebbs elsewhere, in more detail, but in respect of the present incident, it suffices to say that first, up to certainly 2007 Mr Kirk was anxious to emphasise to the courts that any information given by Mr Ebbs was totally false; and second, looking forward to my findings below, I found the evidence of Mr Ebbs before me bizarre and incapable of belief.

Would the RCVS now hold a similar view to their one ruled upon on 29th May 2002 when so reliant on the evidence of Christopher Ebbs, Inspectors Howard Davies, Khilberg and Andrew Rice and evidence from the likes of PC Osborne?

701. When Mr Rice himself gave evidence before me, he denied any recollection of attending on the “Stoffa” occasion. I consider that there was more than a hint of seeking to distance himself from any and every possible suggested involvement with Mr Kirk. Whilst Mr Kirk’s memory is certainly not immune from error, as I have observed elsewhere, including occasions during the hearing before me when within minutes he misremembered what a witness had said, there is here a letter bearing the date 1 June 1998, (the very day of the Magistrates Court hearing involving Mr Stoffa), in which Mr Kirk identified “Sgt Rice number 1581”.

702. I deal below with the allegations against PS Rice. However on logical analysis of Mr Kirk’s claim that he was maliciously prosecuted for speeding in respect of the present incident, (i) the fact of speeding by the vehicle in question is not in question; (ii) the matter was processed via the Central Ticket Office in the usual way; (iii) the photographic evidence was sent to Mr Kirk; (iv) Mr Kirk went no further towards identifying the driver (contrary to his later assertion or recollection) than I have set out above, and he did so long outside the statutory period within which he was required to identify the driver. I find it impossible fairly to discern evidence of malice or want of reasonable cause on the part of the police. Mr Kirk’s incendiary reaction to the CPS prosecutor declining to give up possession to him of the speed camera photograph speaks much to Mr Kirk’s personality and character, but the role actual or supposed of Sergeant Rice in restoring

order to the courtroom or its environs adds nothing to Mr Kirk's case overall in respect of this incident.

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- i) Incorrect- both of the alleged van incidents of 'speeding' remain in question
- ii) It was not processed in the 'normal way'
- iii) no photographic evidence was ever sent to the Appellant, safe to identify anyone, especially when put alongside the still withheld clear enhanced copy of the CPS's photo that had fluttered out of the police file to the court room floor

Despite the Appellant's secretary's repeated requests by both letters and telephone calls and by supplying further proof of the Appellant's innocence, once again, 'selective amnesia' appears to have dominated those in Barry police station, deciding or not to prosecute, with their 'in house gravy train' colleagues, the area's CPS office, just across the corridor within their police station walls

- iv) Ample opportunity had been allowed, from the Appellant's information, supplied before the Barry magistrates hearing to withdraw the prosecution doomed to failure when fuelled by obsessed senior management with a 'current batting average' by now of still only a 11% win overall. This was to change once both roadside tactics were changed and HMC&TS offered to give a helping hand.
- v) Inspector Rice's denial of being at the incident of CPS's Stofa arrest is again indication for the need for an outside police force to obtain proper disclosure of court records and a stark warning to others who chose to cross the bridge from England especially when the Westminster is shortly to grant Wales, like Guernsey, both their own police force and judicial autonomy!