HM Court of Appeal

London

UK

11th October 2021

Case no 1CF03361 Cardiff County Court

Dear Sir /Madam,

TARGETED MALICE

1. I am the appellant as Claimant in Maurice John Kirk v the Chief Constable of South Wales Police and was stuck in France in past few weeks due to a lost passport, medical issues and UK phone not still working. I appear to have lost communications with my barrister since his apparent permission to appeal was filed somewhere.

2. My own Sept 2021 N244 application, for obvious disclosure for the new evidence for HHJ Petts QC, of what was startlingly uncovered by my barrister in cross examination from so few I was allowed to give evidence caused my alarm that here is yet another 'stitch-up'

3. HHJ Petts QC denied, before me, having knowledge of my very relevant N244 application.

4. I have since been made aware that an appellant's notice was sent to a court by my acting barrister based on the purported not seen sealed judgment of HHJ Timothy Petts QC.

5. I also write to establish if my appeal was filed with you and on time?

6. I copy this letter to Cardiff County Court I hope will confirm an appeal, in some form, was at least filed with the local court from my substantive claim heard in this September?

7. I ask that the County Court or your RCJ court, if relevant to you, to send me email copy of the HHJ Petts QC judgment to try and allow me to understand as to what is really going on?

8. Last time I had this trouble in Wales I had to travel to the RCJ three times, over 16 months, until trial judge HHJ Seys Lewellyn QC begrudgingly sealed my BS614159 judgment, of 40 odd other failed malicious criminal prosecutions, on the day of his retirement.

9. The BS614159 judge had already unlawfully delayed this machine gun conspiracy claim for years, in my humble opinion, as it was still further overarching evidence of targeted malice.

Thankyou

Yours

Maurice J Kirk BVSc

BPC.Cardiff

From: Cardiff County, Hearings
Sent: 11 October 2021 12:33
To: BPC.Cardiff
Subject: FW: 1CF03361 machinegun police conspiracy
Attachments: 21 10 06 Judgment of HHJ Petts dated 15th September 2021 1CFO3361.pdf; SMF3301Coal21091511060 (2).pdf

Following other email forwarded

From: Maurice Kirk <maurice@kirkflyingvet.com>
Sent: 11 October 2021 12:25
To: Cardiff County, Hearings <hearings.cardiff.countycourt@justice.gov.uk>
Cc: David Leathely <coalxlex@gmail.com>; Celia Jeune <celiajeunejsy@gmail.com>
Subject: 1CF03361 machinegun police conspiracy

As an afterthought if nothing of this case is known to either HM Court of Appeal or Cardiff County court administrations I enclose judgement and my barrister's last submissions both remarkably revealing Gold Group/MAPPA targeted malice

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Maurice J Kirk BVSc

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Case No: 1CF03361

IN THE COUNTY COURT AT CARDIFF

Cardiff Civil and Family Justice Centre
2 Park Street
Cardiff CF10 1ET

Date: 15th September 2021

Before :

HIS HONOUR JUDGE PETTS

Between :

MAURICE JOHN KIRK	**Claimant**
- and -	
THE CHIEF CONSTABLE OF SOUTH WALES	**Defendant**

David Leathley (instructed on a Direct Access basis) for the Claimant
Lloyd Williams QC and Christian Howells (instructed by Dolmans) for the Defendant

Hearing dates: 6th, 7th, 8th, 9th, 10th and 13th September 2021

Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

were no reasonable grounds for anyone in SWP to suspect that any relevant offence had been committed, such that while the arresting officer DC Richard Jones did not act with malice, his superiors did;

ii) SWP's exaggerated and false evidence led to the Crown Prosecution Service wrongly but in good faith considering that the evidential and public interest tests for prosecution were made out, and also to the CPS objecting to bail such that the Claimant was remanded in custody pending trial;

iii) false and / or corrupted evidence was given at trial, in particular whether the machine gun put before the jury as the key exhibit was actually the gun owned by the Claimant, and as to whether an undercover officer "Foxy" who gave evidence in the Crown Court trial was actually the person who spoke to the Defendant on the telephone;

iv) the underlying motive was to frustrate the Claimant's ability to bring his existing civil claims against the Defendant, this being "targeted malice" against him for the purpose of his claims for malicious prosecution and misfeasance in public office.

6. The claims are denied. The Defendant says the Claimant's arrest was justified based on the Claimant's behaviour at the time when he was apparently in possession of a machine gun. This led to the Claimant's arrest on 22nd June 2009, his being interviewed and charged, and further evidence being obtained including evidence from the London and Birmingham Proof Houses that the machine gun had not been decommissioned. It is said therefore that the Claimant's arrest was lawful, necessary, reasonable and proportionate, and that his prosecution and his remand are not matters for which the Defendant can be held liable as a matter of law. The supposed reason for SWP acting as it did is denied.

Procedural chronology

7. The Claimant issued these proceedings as long ago as 27th May 2011 and a defence was filed on 30th June 2011.

8. On 12th July 2011, HHJ Seys-Llewellyn QC (Designated Civil Judge for Wales at the time) gave the parties permission to file amended statements of case and then stayed this claim, pending determination of existing civil proceedings brought by the Claimant against the Defendant.[2]

9. The stay was lifted by order of HHJ Seys-Llewellyn QC on 29th December 2016 and thereafter came before HHJ Keyser QC on 12th June 2017 for directions, which included permission for further amendments to the statements of case, disclosure by list, and exchange of witness statements coupled with a debarring order for statements not served by the given date. By order of 1st September 2017, HHJ Keyser QC ordered the Claimant to answer some (but not all) of the questions posed in the Defendant's lengthy Request for Further Information. Thereafter, the case management timetable was

[2] The trial bundle did not include a copy of the judgment of HHJ Seys-Llewellyn QC in those other claims, and I have not considered or taken into account any evidence or findings from those proceedings, beyond noting the parties' agreement that the majority of the claims made by the Claimant in that litigation failed, including the allegation of an over-arching conspiracy by SWP against him.

has been ignored but because I have had to draw the line somewhere on what this judgment should contain in order to explain my reasons for my decisions.

16. Before closing submissions on the sixth day, the Claimant issued an application for specific disclosure and witness summonses. Mr Leathley did not press the application before Mr Williams QC began his speech, simply saying that on instructions he was reading it into the record, so there was nothing for me to do. Mr Leathley returned to the matter briefly at the end of his closing submissions, asking on instructions that I delay judgment until the documents (set out in 22 categories) were obtained. At that stage, I still not been passed a copy of the application, and I said I would deal with it when the court office passed it to me, which it did after the hearing.

17. The application is completely without merit and so I will not be deferring judgment for further disclosure to take place or further witness evidence to be heard. The application had not been served on the Defendant by the time we reached the close of submissions, which is an indication of how late the Claimant was in making the application. There was no witness statement in support of the application and so no explanation for why the application was being made so late in the day. The unexplained extreme lateness of the application is sufficient reason to refuse the application. It would have made completing the trial this week impossible. In any event, in an application for specific disclosure against SWP, I cannot order that third parties such as the RAF, HMP Cardiff, the Imperial War Museum Duxford or named medical practitioners (to name just a few of the non-SWP entities, none of whom had been served with the application either) provide their records. As for the list of witnesses to be summonsed to give evidence for the Claimant, there are again many reasons to refuse the application. The Claimant is debarred by previous order from calling any witnesses and he has not explained why that situation should be reversed, which is particularly relevant in the case of his (now ex-) wife and his daughter who, if they had relevant and helpful evidence to give about events, might have been expected to provide statements for the Claimant at a much earlier stage. Some witnesses are police officers, including one who was unable to give evidence because of illness during the trial as evidenced by medical notes, and in reality the Claimant wants them to be called so that he can have them cross-examined, which is not a proper use of the witness summons procedure as it would get around the rule that it is for a party, not his or her opponent, to decide which witnesses (if any) to call in support of their case.

The law relating to false imprisonment

18. SWP's skeleton argument summarises the main principles as follows, which I accept:

    i) The burden of proof is on SWP to justify imprisonment, not on the Claimant to show that his imprisonment was unjustified.

    ii) The arresting officer must personally have reasonable grounds for suspecting that the Claimant was guilty of an offence and consider that the Claimant's arrest was necessary for the prompt and effective investigation of the offence.

    iii) The grounds must be honestly held and objectively justifiable.

the CPS is deliberately manipulated into bringing the proceedings.[4] The Claimant accepts that this is the test, and argues that this is such a case.

24. As to factor (iii), SWP cites caselaw to the effect that the Claimant must prove that the police officer in question did not actually and reasonably believe that there was cause for prosecution and a proper case to go before the court.[5]

25. As to factor (iv), SWP cites caselaw to the effect that the Claimant has to prove that the relevant officer caused the prosecution to be brought for an improper motive. Absence of reasonable and probable cause is evidence of malice, but malice is not necessarily to be inferred from unreasonableness.

Law relating to misfeasance in public office

26. The Defendant cites caselaw to the effect that the Claimant must prove that a police officer acted in bad faith and deliberately engaged in conduct with the specific intention of injuring or causing loss to him.[6] Again, there was no disagreement on this.

Firearms Act 1968 and Firearms (Amendment) Act 1988[7]

27. Before I turn to the evidence, I ought to summarise the relevant points of firearms legislation.

28. In general terms, a "firearm" is defined in the 1968 Act as meaning a "*lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged*" (section 57(1)). Or, to put it another way, an item is not a "firearm" – and so possession or transfer of it cannot be an offence under s.5(1) – if no shot, bullet or other missile can be discharged from it. The 1988 Act provides a statutory presumption (section 8) as to how a firearm can be shown to have been rendered incapable of discharging any shot etc, namely being marked and certificated by the London or Birmingham Proof House. However, it was accepted in evidence by Philip Rydeard, a former Home Office forensic scientist called by SWP, that there are and were other ways of deactivating a firearm otherwise than in accordance with that statutory presumption (albeit that he said that this weapon had not been deactivated at all).

29. By section 57(1)(b), the term "firearm" also includes "*any component part of such a lethal or prohibited weapon*".

30. While Section 1 of the 1968 Act makes it an offence to possess certain firearms without a certificate, section 5(1) of the 1968 Act prohibits possession or transfer of a firearm within particular categories. This case is concerned with an alleged prohibited weapon under section 5(1)(a), namely a firearm "*which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger*", often called a machine gun.

31. I can deal briefly with a point raised in the Particulars of Claim and in opening but, correctly, not pressed in closing, which is whether the machine gun could be possessed

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[4] *Rees v Commissioner of Police for the Metropolis* [2018] EWCA Civ 1587, paragraphs 45-52
[5] *Glinski v McIver* [1962] AC 726, 758 (Lord Denning) and 768 (Lord Devlin)
[6] *Three Rivers DC v Governor and Company of the Bank of England (No. 3)* [2003] 2 AC 1
[7] References to the relevant statutory provisions are to the versions in force at the time of events.

machine gun, always a machine gun." He was shown a deactivation certificate from the Birmingham Gun Barrel Proof House dated 11th June 2010, so a few months after the crown court trial. It stated that work had been carried out on the gun – describing it as "a single barrel shotgun" – to render it incapable of discharging any shot, bullet or other missile such that no firearms certificate is required to possess it. It noted that the gun had been submitted by Litts at the Sportsman, who Mr Rydeard described as a reputable firm of gunsmiths, so he presumed that the exhibit had been given after the trial to Litts to perform some work before sending it to the Proof House for a deactivation certificate. Asked how it could be described as a shotgun if "once a machine gun, always a machine gun", Mr Rydeard said that once the gun has been deactivated, it is no longer a machine gun and becomes pieces from which something could be made. He also suggested that this description might have been used because it had (when he saw it) a smooth-bored barrel not a rifled barrel. For what it is worth, I consider that Mr Rydeard's supposition is the most likely version of events – some work was carried out to put it beyond doubt that the gun had been deactivated, but as we do not know what work was carried out, the deactivation certificate cannot be used as proof of the state or best description of the gun before it was deactivated. Mr Huxtable, the SWP armourer, said that the police would not send a gun off to be deactivated and I accept this as well.

The Claimant's evidence

35. Mr Kirk gave evidence on the first afternoon of the trial. His long-standing interest in aircraft was common ground. He said in his statement, without challenge, that he has collected vintage aeroplanes for about 50 years and can trace his interest back to his early childhood. He and his late father, from whom he inherited his interest, were both veterinary surgeons and they each in turn have been known as the "Flying Vet".

36. He said that in 1997 he purchased a replica DH2 aircraft. The original DH2s saw active service in the First World War and had an unusual design, namely that the propeller was at the rear with a machine gun mounted at the front. This avoided the difficulty of having to fire a machine gun through the propeller, which in 1916 some German aircraft (but not British ones) could do. The DH2 was difficult to fly and needed the weight of the gun on the front to provide the correct centre of gravity in balance with the engine at the rear.

37. He said in paragraph 11 of his statement that he bought the DH2 "*together with film prop gun, both had been used in the film 'Gun-bus'*". He said that the Lewis display gun was one of a batch of five which he was told came originally from the RAF and then the Imperial War Museum, having been decommissioned under old legislation with an easy to see 'barrel' with no 'rifling' – he described the barrel in his statement as "*a piece of pipe that was blocked near the breach end and so could not fire a single round*". Later he said it "*appeared to be water pipe with no internal trigger mechanism*". He added in his statement that he was more interested in the aeroplane than the gun in any event. He said that he acted in good faith in reliance on what he was told, namely that the gun had been deactivated to standards required by old legislation which would be sufficient as long as no-one tampered with it, and so did not explore the internal parts of the gun. He said that he was also told that parts had been stolen from it when it had been lying around for year, hence the lack of deactivation markings on the barrel, which was a replacement.

weapons on aircraft, only the impact on airworthiness, saying that if the CAA inspector did not think it was legal, he would have raised it with the police or with his as the owner.

42. He sold the DH2 to Gerry Cooper on 24th June 2008 and sold the gun to him separately in August 2008. He was asked why his website advertised "Lewis machine gun with spare ammunition c.1916" for sale, if he did not think it was, and he said he "*was behaving like a lawyer in Wales and being economical with the truth*", and he told people the truth when they phoned up anyway. He was asked why he was selling it separately from the DH2 if the gun was an integral part of the DH2 (having earlier agreed that the gun had been separated from the DH2 for some years when he owned both) and he said that the advert was because he had not finished the transaction with Mr Cooper. Asked why the advert was posted in April 2009, he firstly said that he had other things to do with his family, then he said that he wanted the general public to know that he anticipated this conspiracy against him. I fail to see how posting an advert in these terms on his website would show the general public that there was a conspiracy against him.

43. He was asked about various photographs or videos on his website in which he was holding the gun. He said that the photographs were taken on the day that he sold it as he realised that he had never even picked it up, so got his daughter to take some funny shots. Photographs of him holding the gun with captions such as "*dressed for Cardiff Court and a level playing field*", or "*Glorious 12th - crooked lawyer shoot*" were (he said) either put up to wind up SWP who were keeping him under 24-hour surveillance under MAPPA[9] or as attempts at humour. He was asked about a short article on his website headed "*The Final Solution?*" complaining of the breakdown of law and order through corruption, with a photographs of him holding a gun at the top. He agreed that by the use of that title he was referring to what the Nazis had done, but he said did not remember writing the article in question.

44. He was asked why his website listed the names of many police officers with a request for information about their families, schools and clubs attended and so on. He said that this was in order to find out where they lived, by trailing them like a private detective, so he could serve witness summons on them as he was unable to do so at police stations. Similarly, a photograph of members of the South Wales Police Authority with the words "*So who is accountable? Well I know where a few of these live, for starters*" was posted, he said, in order to obtain their contact details so he could ask for their help.

45. He was asked in cross-examination about a recording of a conversation in May 2009 said to be between him and an undercover officer identified as "Foxy", who purported to be someone interested in buying the machine gun advertised for sale on the website. He did not accept that the second voice on the recording was his, although he said that he had had an extremely similar conversation but with someone with a female voice not a male voice as on the recording. He said that his wife had received a call from a woman and he knew on questioning the person during the telephone call that it was a set-up. It was put to him that he had not said during the crown court trial that the man who gave evidence as being "Foxy" was not in fact the correct person because the conversation had been with a woman, and he said that he did not remember. He was asked why he had said to Foxy that "*this one worked*" (i.e., the machine gun) and, after saying he

[9] Multi-Agency Public Protection Arrangements

and when. His answers were mutually contradictory and evasive. I do not believe he formed the view while owning the gun that it was a load of old rubbish. That is a later invention of his. In my view, he probably gave the question of the legality or otherwise of the gun little consideration at the time. I have already noted the difficulty he had in answering the question about what the RAF and CAA knew about the gun. I do not accept that he deliberately placed a false description of the gun on his website to be economical with the truth or to provoke the police. Similarly, I do not accept his evidence that Foxy was a woman or that he knew that Foxy was a police officer or that he was intending to refer to the use of the machine gun as a single shot shotgun when he said it worked. As for his videos and captioned photographs, I can see how they could have been intended by him as grim or inappropriate humour but, as I shall go on to consider, I can also see how SWP would understandably have a sense of humour failure when it comes to such jokes made by someone acting in a disturbing manner towards police and others and with apparent access to a working machine gun.

The Defendant's evidence – events leading up to the investigation

50. In the Defence, SWP sets out a long list of incidents or other matters relating to the Claimant of which it was aware before the Claimant was arrested. Most of these predate the start of Operation Challis (the name given to the investigation into the Claimant in May 2009). In large part these were not in dispute, and I can summarise them as follow.

i) A history of previous convictions, including assault on police officers (albeit I note that no convictions for violence were recorded in the intelligence documents for Operation Challis that post-dated 1999);

ii) His removal from the register of the Royal College of Veterinary Surgeons in 2002 because of his behaviour (not his treatment of animals within his care), for which he blamed SWP;[10]

iii) The long history of litigation against SWP and others alleging conspiracy against him;

iv) Frequent and serious allegations against SWP and its officers;

v) Occasionally bizarre and unpredictable behaviour, including landing his airplane near the ranch of US President George W. Bush in April 2009 – which was said to be to thank the President for the actions of US military personnel in rescuing him after crashing in the sea – and his visit in January 2009 to the home of Prince Charles in Gloucestershire to hand-deliver a letter about SWP misconduct (when, after being refused entry, he asked locally about a rear entrance to Highgrove). The Claimant was asked about this in his evidence in chief, saying that he was on his way to a nearby airfield and wanted to deliver a letter to Prince Charles about 20 years of SWP's behaviour, but the "*lovely police officers*" at Highgrove, "*straight out of Noddy Land*" (which he said was a compliment to their genial nature, not an insult, although I do not accept this)

[10] The Operation Challis intelligence briefing sets out extracts from the judgment of Lord Hoffmann, giving the decision of the Judicial Committee of the Privy Council in *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 4 (reported in full at https://www.bailii.org/uk/cases/UKPC/2004/4.html), rejecting the Claimant's appeal against the decision to remove hm from the register.

it would not be normal procedure to keep a policy file for decisions, and there would have been no reason for him not to have done so at the time.

53. He read a confidential briefing pack prepared by South Wales Police Intelligence Directorate, dealing with events to date. He exhibited this to his statement. It provided a considerable amount of background material for the police and in large part refers to the events summarised above. It said that the gun in the photographs on the Claimant's website appeared to be operable but that this could only be confirmed by obtaining and checking the serial number.

54. The document said that the threat assessment should be reassessed for the following reasons:

> "1. Mr Kirk has posted a reward for information regarding her home address and social engagements. This shows his determination in locating Miss Wilding and confronting her over his personal vendetta. Given that he has offered violence in the past, this should not be ignored.
>
> 2. He is advertising, albeit a 1st world war antique, a machinegun for sale.
>
> 3. the fact that his wife still legally possesses a number of firearms to which her husband may have access"

55. The intelligence document was added to as further information was obtained – for example, later versions list matters such as: vehicles and aircraft and premises linked to him; and details of occasions when he travelled to and from France (where he had property) by ferry or by airplane.

56. Mr McKenzie said in his statement that he did not regard posting a reward for information about the named individuals as a legitimate method of seeking to contact them, and that he could see no reason for the need for information about schools attended by family members. The material on the website, accompanied by the fact that he may be in possession of at least one firearm, made him concerned that the Claimant could cause significant harm to any of the named individuals. Overall, the previous incidents and material showed him "*to be a volatile and erratic individual, who had no respect for authority [and who] was displaying concerning behaviour.*"

57. Mr McKenzie recorded that the primary objective of the investigation/operation was "*to ensure the safety of the public, potential victims, witnesses, police staff and Mr Kirk himself.*" Advice was to be sought from CPS about the machine gun and also about the material on the website offering a reward for information, with its implied threats, and the intention to arrest the chief constable. A decision was made by him on 28th May 2009 not to arrest the Claimant at that time as he assessed the risk to individuals as relatively low, based on a lack of previous convictions for firearms offences and his being in France, coupled with the need to ensure that any firearms and ammunition were recovered on arrest to avoid a situation where the Claimant was released on bail but still had access to firearms. He also said that he was mindful of the litigation against SWP and wanted to avoid any suggestion that his actions were influenced by that case.

suggestion that there was any sinister in his note that the CPS were advising that SWP "build a case" against the Claimant, saying that this was a phrase frequently used when investigators progress lines of enquiry. He denied the suggestion that there was anything suspicious about him going absent on the eve of the arrest, or that he had fled from Operation Challis because of nerves or because he did not want to be associated with it. He denied being part of an ongoing vendetta to hobble the Claimant in his civil litigation against SWP.

62. At the end of his evidence, Mr McKenzie left court. I did not particularly notice the Claimant leaving also, while counsel and I discussed arrangements for the following day. It then became apparent that there was an incident taking place outside court. I heard the Claimant saying "Liar!" in a raised voice. The usher came back in and reported that the Claimant had come up behind Mr McKenzie, put his hand on his shoulder and carried out a citizen's arrest. On returning to court, and after discussion with Mr Leathley, the Claimant agreed that he had done this. I warned him as to his future behaviour in the courtroom and that any repetition or any other confrontation with witnesses could lead to him being remanded in custody for contempt and missing the rest of the trial. Thereafter he did not speak to or confront any of the witnesses – with the exception of standing up to thank one police officer at the conclusion of his evidence for his "rare honesty", behaviour that I still regarded as unacceptable and so I told him to sit down and not speak to the witness.

63. Notwithstanding the slip or misspeaking about MAPPA, I was thoroughly impressed by Mr McKenzie. He struck me as an honest officer who had acted with integrity, balancing the need to protect the public with the need to secure what was – for all he knew – a potentially lethal firearm. His evidence was not dented in cross-examination. Crucially, I accept his evidence that he did not act with any motivation connected to the ongoing civil litigation against SWP, and that MAPPA arrangements were not put in place to aid SWP either in defending the civil litigation or in increasing the likelihood of the Claimant being remanded after his arrest. It has previously been ordered that the MAPPA minutes are not disclosable and I refused an application by the Claimant to reverse that position in the light of Mr McKenzie's evidence.[11] Even if SWP (whether through Mr McKenzie or otherwise) were the driving force behind MAPPA certification in the Claimant's case, I am satisfied that it was an appropriate and proportionate response to the risk potentially posed by the Claimant as assessed at the time by SWP. Whether MAPPA level 3 was the appropriate level is not for me to decide, there being no evidence in any event relating to what difference to the Claimant another level would have meant, and such matters go well beyond the scope of this litigation.

64. Turning now to Mrs Suzanne Hughes, a Detective Inspector at the time, she was appointed as Mr McKenzie's deputy at the start of Operation Challis. It was Mrs Hughes who prepared the arrest strategy document, for the Claimant's arrest on suspicion of being in possession of a section 5 firearm and ammunition, and threats to cause criminal damage. The justification for arrest referred to the photographs posted by the Claimant on his website, the listing of a machine gun and ammunition for sale, and the threat to cause damage to Dolmans solicitors. It said that there were reasonable

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[11] I have not seen the order and I am unsure whether it was an order made in this claim or in a previous claim between the parties, but it was common ground that such an order had been made. In fact, it was also common ground that the Claimant has in fact obtained copies of the minutes in any event.

being partly made of aluminium not steel, and being inconsistent with the .303 cartridges it would have fired.

71. The gun was recovered from Mr Scott by PC Rigley at 7pm, and it was from PC Rigley that it obtained its exhibit reference AJR/1. PC Rigley made sure it was safe but doubted its authenticity. He then passed it to a colleague at 10pm who passed it to Nigel Brown from SWP at 11.40pm as I will come on to deal with. After further examination of the gun by SWP (again covered below) she noted the view that it was a prohibited weapon and recorded that the CPS were to be consulted about charge. A decision was made by the CPS, based on the documentation submitted (the MG3), to charge the Claimant.

72. On 24th June at 08.00, Mrs Hughes recorded a decision that the gun should be examined by the Forensic Science Service as a priority submission, and it was received at the Manchester laboratory the following day.

73. At 13.00, she noted that the Claimant had been given bail by the magistrates and that the CPS were to challenge the decision. On 25th June 2009, HHJ Merfyn Hughes QC remanded the Claimant in custody. Thereafter the investigation continued. On 6th January 2010, she was contacted by a solicitor for Mr Cooper to advise that Mr Cooper, Mrs Cooper and Mr Page were concerned about giving evidence in court, and that Mr Cooper would say that the gun was blocked in his possession, and it had been tampered with since he handed it over. She recorded her view that the evidence of Mr Scott, that he could see daylight down the barrel, would negate any suggestion of tampering.

74. In general, she denied any impropriety in the investigation or any malice towards the Claimant, about whom she knew nothing before becoming involved in the investigation.

75. It was suggested that she and others were all too senior to have been involved in such an investigation, but she said it was justified given the information she had. She denied any suggestion that she was making a mountain out of a molehill. She denied that she knew before the Claimant's arrest that gun had been sold. The Claimant was unable to point to any information showing this, however, nor was it satisfactorily explained how SWP should have been able to find this out (insofar as this is relevant to the causes of action). She denied being sufficiently curious about the Claimant so as to lead her to research the civil proceedings. She was asked about the risk he posed to others including those involved in the legal establishment, and whether she knew that at the time the Claimant lived next door to a (since-retired) circuit judge based at Cardiff Crown Court – she said that she did not know this, but she denied the suggestion that the only threat the Claimant posed was to the integrity of SWP through his civil proceedings. She disagreed that in reality she regarded the Claimant as minor and significant.

76. She was asked about a Proceeds of Crime Act application made to the Crown Court at Merthyr Tydfil, which she said was designed to see if there was any evidence that the gun had been sold by getting access to his bank accounts. She denied the suggestion that this application was proof that SWP knew that the gun had been sold, saying it was a line of enquiry. She denied any knowledge of or involvement in the MAPPA process. She denied that the plan was to use MAPPA to stop the Claimant getting bail and denied that the police had put pressure on the CPS to appeal the decision of the magistrates to grant bail. She said that even though the gun had been recovered, based on the Claimant's actions before, there was a real concern that he would interfere with

82. He denied the suggestion that his use of the term "antecedent statement" was a Freudian slip showing he had been tasked to dig up dirt on the Claimant and the state of his marriage. He denied that this was his role and denied that he had been trying to make her fear that her husband was worse than simply grumpy. He said that he was not told by Mrs Kirk that she was filing for divorce and had no knowledge of how that claim was said to have appeared in a document setting out objections to the Claimant being given bail. He was not taken to any such document during his evidence, nor was anyone else, nor was I was referred to any such document during closing submissions, I should add, so it is an allegation that has no evidence in support.

83. He said that he had had no previous dealings with the Claimant but might have known that he was known as the "Flying Vet" and had a website under that name. He agreed other officers would have known of the Claimant.

84. He could not remember if he had been told before heading to the Claimant's house that the Claimant was MAPPA level 3, saying that he has dealt with a number of people like that in his various roles. He confirmed that he was not a firearms officer and denied being in trepidation going to the Claimant's house, making the obvious point that the Claimant had been arrested by that time.

85. He was asked about the attendance of social workers at the property, being used to put pressure on Mrs Kirk to assist the police by threatening care proceedings. He did not recall any social workers being present. There is no evidence from the Claimant or anyone else, or from any disclosed document, that anything like this happened.

86. I have no difficulty in accepting his evidence.

Interviews – DC Erica Knight and DC Ian Williams

87. DC Ian Williams had been tasked to plan and manage the interview. He said in cross-examination, and I accept, that he had no knowledge of the Claimant before becoming involved in the investigation. He said, and again I accept, that he was only told of the fact that the Claimant was involved in civil proceedings against SWP as the focus was on the offences under investigation and he did not have access to other files relating to the Claimant. Asked about why such an apparently dangerous man was not arrested at the first opportunity, he said that he was not involved in the decision as to when the Claimant was to be arrested

88. He said that after the Claimant arrived at Port Talbot (which was the point at which he went down to the custody suite), the Claimant "*remained mute refusing to answer all questions during the booking in process. He refused to make eye contact remaining focused on the floor.*" DC Williams arranged for a nurse to examine the Claimant to ensure he was fit for interviewed and, before this examination, arranged for an appropriate adult to attend to protect the Claimant's interests. An hour or so after the Claimant's arrival at the station, he was asked if he wanted something to eat or had any medical issues, replying "*the only thing I'm allergic to is pretty girls.*" Just under half and hour later, the nurse examined the Claimant, obtained details of his medication and said that he was fit for detention and interview. DC Williams said that as the Claimant otherwise remained completely uncommunicative, he arranged for an examination by a psychiatrist from Caswell Clinic Bridgend, to see if there were any underlying mental health issues meaning that he was not fit for interview or detention. This happened a

deactivated, the firing pin was still intact, daylight was visible along the barrel length, there was no sign or any pin or block and no visible Proof House markings. Nottinghamshire Police retrieved the gun from Mr Scott, and it was handed over to Mr Brown at a service station on the M42, before being kept in the locked firearms cage in his office. On the following day, he passed the gun to Andrew Huxtable, SWP Forensic Firearms Examiner and National Ballistics Intelligence Service Armourer.

94. Mr Brown's main roles are to establish continuity of the exhibit from Nottinghamshire Police to SWP and to confirm what Mr Scott said to him in the telephone call, of which he made a note. Although he was not cross-examined in this trial, I accept his evidence on both points, having not been given any reason to doubt the contents of the note of the conversation with Mr Scott.

95. In his statement, Mr Huxtable said that he had been asked to carry out a preliminary examination of the gun. He noted an Allen key-type headed screw, about 1.5 inches long and 3mm in diameter, screwed vertically from above into the barrel. His view, recorded in a statement dated 23rd June 2009, was that this was not in line with deactivation regulations required by firearm law since it was neither pinned nor blocked, and that the weapon was a firearm within the meaning of section 5(1) of the Act.

96. He was extensively cross-examined. He was unable to remember whether the magazine was attached to the gun or not when he first saw it, but he said that it would be good practice for the Nottinghamshire firearms officer to have made it safe by removing the magazine. He was repeatedly criticised for not being able to remember but I found this answer entirely convincing. I am not surprised that he cannot remember, more than twelve years later, whether a particular firearm had had the magazine removed before it was handed to him. It was put to him that he had to remove the magazine to make it into a firearm within the meaning of the Act, but that proposition is simply wrong in law. He was able to remember that the hexagonal screw obstructed the chamber, but he could see light either side of the screw when he looked down the barrel. He was asked about Mr Cooper's evidence in the crown court trial that the breach was blocked when he got it, and Mr Huxtable said that the screw was the only blockage.

97. He was adamant despite heavy challenge that his role was only to see whether the gun had been decommissioned and whether it was capable of being a prohibited weapon. If so, it would need a more detailed examination. I accept his evidence that he had not been asked to carry out a full examination, and so the lack of a full examination or a test firing to see whether the gun was in full working order is not surprising. He denied that he had been put under any pressure to produce a report favourable to the investigation and I accept this. Had he given in to any such improper pressure, then no doubt the report would have made claims about it being in full working order or the like to make it more favourable, but the limited nature and purpose of the examination and the report seems to me to be entirely realistic for his role and the stage of the investigation at that point. He denied that he had fiddled or tampered with the exhibit in any way to ensure that his report was damning to the Claimant. I accept his evidence on that.

98. He was asked why the gun stayed with him in his secure store for two days before being sent on for a further examination. I accept his evidence that it was for others, not for him, to decide what happened next with the gun and when, so his lack of explanation

weapons applied. He explained in his evidence that this was because there were several components that could be taken and fitted into another Lewis gun to make a fully functioning automatic weapon.

102. He was asked about Mr Cooper's evidence at trial that the breech had been blocked when he had it, and he said that if the magazine was not attached and the screw was screwed all the way in, then the breech would be blocked or partly blocked. The suggestion was put to him that the gun had been tampered with after leaving Mr Cooper's possession and he said that he had no knowledge of that. As was pointed out by SWP in closing submissions, he was not asked if the gun showed any sign of recent interference, nor asked if there was anything to show that the gun had previously been blocked (i.e., by something other than the screw) and the blockage removed.

103. Mr Rydeard was clearly very experienced in examining firearms and I accept his detailed evidence.

Other actions involving the gun before trial

104. DC Dodge was tasked on 24th July 2009 with going to Carmarthen library and researching from the local newspaper the incident in the summer of 2000 when the Claimant had been forced to land his DH2, and also speaking to the officer who attended. On 6th August 2009, he took the gun from the Bridgend armoury to the Birmingham Proof House, where it was examined by the Superintendent, from whom a statement was taken confirming that the gun had not been deactivated. Then on 14th August 2009, he again took the gun from the Bridgend armoury to show it to various people and take statements from them: Charles Page, who transported Mrs Cooper by airplane to collect the gun from the Claimant; Mr and Mrs Cooper; and Mr Scott, the firearms dealer to whom Mr Cooper handed the gun after being informed by the CAA that SWP were interested in it. Asked whether he could identify the gun, Mr Page said that he recognised the barrel, but the rest had been covered up, although it felt similar in weight. Mr Cooper said that the gun looked similar in shape, size and markings to the one he had purchased from the Claimant and subsequently passed to Mr Scott. He said that he could not previously push a wire rod down the barrel but was now unable to do so. Mrs Cooper said that the gun looked similar to the one she saw but she had little knowledge of it. Mr Scott was able to confirm it was the same gun because of the serial number.

105. He said that he did not know why these enquiries were needed, and he was just doing what he had been instructed to do. He did not wonder why Mr Cooper said that there was a difference in the gun, as that was not for him to deal with.

106. He said that he had not been involved with the Claimant before these actions as part of the investigation, apart from one occasion when the Claimant had come to SWP headquarters demanding to see the Chief Constable. He could not remember the Claimant's demeanour but agreed that he had not been remarkably aggressive as this would have been memorable.

107. It was not suggested to him that he had acted improperly, and I accept his evidence.

108. Various other witnesses prepared statements for the purpose of these proceedings but were not called (it being said, for example, that the evidence they would have given

dismissed. In reaching this conclusion, I am in no way undermining or contradicting the decision of the jury in the criminal court trial to acquit the Claimant of both charges, as their task and mine are very different and involve considering different issues.

116. Some final comments. Firstly, nothing I have read about the Claimant or heard from or about him causes me to doubt the accuracy of what Lord Hoffmann said about him in January 2004 in the Privy Council case to which I have referred earlier, and which was quoted in the SWP intelligence briefing for the investigation (at paragraphs 2 and 3 of the judgment):

> "This is a very unusual case. Mr Kirk has an inherited love of veterinary surgery (his father was a veterinary surgeon) and there is no question about his dedication and competence. On the contrary, he appears to be one of a small number of veterinary surgeons practising in Wales who is willing to be called out any time of the day or night to a sick creature. He will sometimes even use his own light aircraft to get there. No animal has any ground for complaint against him.
>
> "Mr Kirk's problem is with people. He combines independence of spirit and a passion for justice with a flaming temper and complete insensitivity to the feelings of others. He sees conspiracies under every bush and believes on principle that all members of the police and legal profession are dishonest and corrupt. He can be abrasive with animal owners and abusive – sometimes violent - towards any of the substantial number of people whom he regards as enemies of justice. The result of this explosive mixture of admirable and less admirable qualities has been a long series of incidents which have brought Mr Kirk into conflict with the law."

117. Secondly, I must thank those at the Defendant's solicitors who were tasked with the preparing the electronic (and for the witnesses, paper) bundles, which were extremely efficiently organised and which greatly assisted all parties.

118. Thirdly and finally, to thank those involved for SWP and the Claimant in the preparation and presentation of this long-running case for trial, which not only ran to time but has finished ahead of schedule, even with a day for preparation of judgment. A particular word of thanks and appreciation to Mr Leathley, instructed in a difficult case on a direct access basis and so lacking the team of support available to Mr Williams QC. It is difficult to think of how the Claimant's case could have been more thoroughly or ardently presented than it was by Mr Leathley, and although it may be of little consolation to the Claimant, in my view he can be assured that his case was put to the very best way it could have been.

HHJ Petts

15th September 2021