

VASANAETH LLYS

Mr M. Kirk Barry Veterinary Hospital 49-53 Tynewydd Road

Vale of Glamorgan

GWASANAETH LLYS

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THE COURT SERVICE

Law Courts

Cathays Park

CF10 3PG

DX 99450 Cardiff 5

Cardiff

THE CROWN COURT AT CARDIFF

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Our ref: NW/am/tape2

10th October 2001

Dear Sir,

CF62 8AZ

Barry

A20010009 / A2000246 Appeals Maurice Kirk

I enclose a transcript of the hearing before His Honour Judge Jacobs on the 4th October 2001 together with a copy of the schedule prepared by the Judge.

Yours faithfully

N. Williamson
Court Manager
Ext 420



IN THE CROWN COURT AT CARDIFF

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The Law Courts
Cathays Park
Cardiff

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Thursday 4th October 2001

<u>Before:</u> HIS HONOUR JUDGE P. JACOBS

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MAURICE J. KIRK

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From the Tape Recording of Harry Counsell & Co.

1C The Court, Newport Road, Cardiff, CF24 1RH

Official Court Reporters

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 $\underline{\text{Mr. G. THOMAS}}$ appeared on behalf of the Prosecution The Defendant acted in person

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APPLICATION TO REINSTATE APPEAL

JUDGMENT

JUDGE JACOBS: What I propose to do in this matter is to give a judgment based upon the application I have heard. The tape, the content of the tape and the tone of the tape will reveal why I see little purpose in hearing any further argument in this matter.

The situation is this. This matter was set down before me and is an application to reinstate an appeal by the Defendant Maurice Kirk. Attached to the transcript which I shall ask to be made of this judgment is a schedule which I have prepared headed "Table of relevant motoring convictions" together with a detailed note of the proceedings at each stage. The matters concern two purported disqualifications by Cardiff Magistrates' Court on the 18th September of 2000 and the Vale of Glamorgan Magistrates' Court on the 2nd January 2001. Both of those matters related to offences of failing to provide a specimen of breath and in one case a further offence of no insurance.

The schedule I have prepared cuts matters short.

It reveals that on the 27th July of 1999 Mr. Kirk received a fixed penalty of three points. That is not the subject of any appeal. On the 8th August of 1999 Mr. Kirk was alleged to have committed an offence of driving whilst without insurance. He was dealt with at Bridgend Magistrates' Court on the 22nd March of 2000.

On the 8th September of 2000 his appeal was allowed. I cannot recollect now whether I was the Judge who allowed

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that appeal but I recollect that in the past I have allowed such an appeal in relation to Mr. Kirk and awarded him a small amount of costs. The problem was that on that occasion Bridgend Magistrates' Court purported to endorse his licence with seven penalty That was on the 22nd March of 2000. On the 5th April of 2000, therefore a matter of two to three weeks later, Mr. Kirk was again reported for offences of no insurance and failing to provide a specimen of breath. He appeared before Cardiff Magistrates' Court on the 11th April. On that occasion it appears that they endorsed his licence with six points for the no insurance and simply endorsed his licence for failing to provide a specimen of breath. That meant now, of course, that along with the Bridgend matters he would have seventeen points on his licence but when they did that on the 11th April they were unaware of the Bridgend conviction. Hence, assuming that he had just nine penalty points, no action was taken in relation to his licence.

What becomes clear is then that during the procedures which followed, in sending up the licence to be endorsed, they discovered about the Bridgend matter and thus the matter was called back to Court on the 18th September and on that occasion Mr. Kirk was disqualified

the 8th September of 2000 Mr. Kirk's appeal against his no insurance conviction had been allowed by Cardiff Crown Court. The result was, therefore, that Mr. Kirk had only nine penalty points and should not have been disqualified under Section 35.

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Unfortunately, the confusion does not end there because for an offence committed in December 1999 he finally ended up in front of the Vale of Glamorgan Magistrates' Court in January 2001. It was an offence of failing to provide a specimen and, once again, for various reasons the Vale of Glamorgan Magistrates purported to disqualify him. The letter from the Vale of Glamorgan Magistrates reveals, a letter written by explanation on the 2nd October 2001, the letter reveals that they believed that he was subject to the six penalty points that had been passed on the 5th April along with the three fixed penalty penalty points, making nine. So here, since he would have to be given a minimum of four points for fail to provide, that would mean that he would be taken over the limit, he would have thirteen penalty points and, therefore, they disqualified him.

As Mr. Thomas concedes, it would mean that they had disqualified him on the wrong basis. The reality is that by then, of course, he had already been disqualified by Cardiff Magistrates' Court. The reality is that had it not been for that disqualification they would, indeed, subject to any of Mr. Kirk's pending

appeals, be entitled to disqualify him but there are pending appeals and those, in themselves, have become complicated.

In relation to the offence of the 5th April 2000 Mr. Kirk has an appeal pending to this Crown Court and, pending that appeal, certainly his disqualification was suspended. The position about his six penalty points is less clear but his disqualification was suspended and, in any case, it is now known the disqualification cannot take effect.

In relation to his offence of fail provide, he again appealed to the Crown Court against conviction. The difficulty here is that there were hearings in front of the Recorder Mr. Seys-Llewellyn. It may or may not be that Mr. Kirk was medically unable to attend, I am pleased to see him here today, but the fact of the matter is that he did not attend and the appeal was dismissed. On that basis, strictly, the full penalty points should take effect and, of course, subject to the six points and the three points, that means that Mr. Kirk could be taken over the limit for totting up but, as I have already pointed out, it would seem that when the Magistrates exercised their powers of disqualification, they were doing so on a false basis and, in any case, we still have Mr. Kirk's appeal against the offences which were finalised on the 18th September.

There is a further complication. Mr. Kirk has

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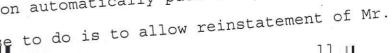
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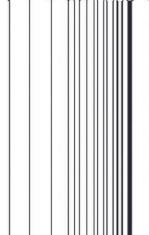
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resolved that he will go to the Divisional Court and in both of those cases the law, as I understand it, is very simple. When there are proceedings in the Divisional Court the appeals to the Crown Court cannot be finalised. So, as sympathetic as I am to Mr. Kirk's appeal against his disqualification in relation to the 18th September, an appeal which plainly must be allowed, I am not in a position to allow it, even if I want to, because the Crown Court proceedings are suspended whilst he goes to the Divisional Court.

In relation to the proceedings on the 2nd January I am told again now that there are proceedings before the Divisional Court. The difficulty now is that unless I make some reinstatement of Mr. Kirk's application for leave to appeal against the conviction and sentence of the Vale of Glamorgan Magistrates' Court on the 2nd January, he will leave here as a disqualified driver and on all that I have heard that would be unjust. On the other hand, it is very difficult at the moment to see why precisely I should reinstate the appeal against conviction.

What I propose to do, therefore, in order to do the best justice I possibly can, is to say this. Any appeal against conviction automatically puts sentence at large,





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Crown Court is seized of the matter to that extent, to suspend his disqualification. If I did not take that step today, whether he likes it or not, he would leave here a disqualified driver and be, therefore, subject to immediate arrest. So, I now allow him to have before the Crown Court an appeal against sentence and his suspension, therefore, is lifted. There is nothing further that I can do.

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Mr. Kirk has raised before me the question of documentation in relation to his failure to provide a specimen of breath on the 5th April and, indeed, for the offence committed in December 1999. I am not further seized of these matters. I repeat again, if there is relevant material which the Crown Prosecution Service has, and it has to be relevant material - what I have in mind is the documentation relating to these two offences specifically. If Mr. Kirk does not have that, and I do not propose to go into lengthy debates about whether he has or not, then he must have it. Other than that, that is the best I can do in these circumstances.

I note, as I am sure the Divisional Court will note, from the record of its own proceedings, that Mr.

Kirk is a man who constantly appears in these Courts. I

throughout this part of the country. There is nothing further that I can or I am prepared to do in this matter and, therefore, I now propose to adjourn.

A transcript of my remarks will be prepared and to it will be attached a copy of the schedule that I have prepared summarises much more succinctly than I have been able to say in my judgment what seem to me to be the salient facts of this matter. A copy of that transcript should be made available to Mr. Kirk, a copy to the Prosecution and a copy should be put in the Court file and the Prosecution and the Court should note that in any subsequent hearings it is essential that those documents are sent to the Divisional Court who, in fact, are well seized of Mr. Kirk because, if they look at the judgment dated the 13th March 2001 before Lord Justice Brook they will be well aware of the situation.

May I, Mr. Gareth Thomas, raise one other matter.

When the Crown Prosecution Service at any level get
material involving Mr. Kirk they know what is coming by
now. One of the problems that has happened, both in
Cardiff Magistrates' Court and in the Vale of Glamorgan
Magistrates' Court, is that the Magistrates had

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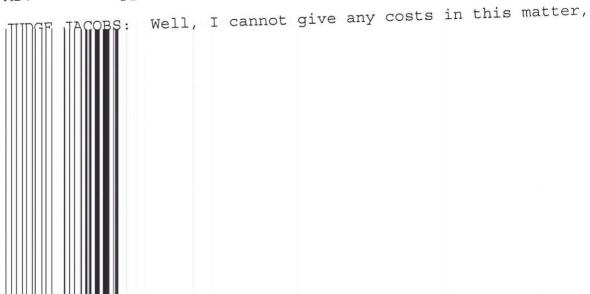
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I would have thought by now that was as plain as a pikestaff and if that had been done then we would have not had the problem in Cardiff Magistrates' Court later They would have known. The CPS, after all, knew there had been a successful appeal and they should have jolly well told Cardiff Magistrates' Court. Certainly the CPS knew that there had been a successful appeal and there were other problems with Cardiff Magistrates' Court. They should have told Barry Magistrates' Court. It is just no point now, rightly or wrongly, in turning up and just treating Mr. Kirk as any other individual. I appreciate the problems. To a great extent he is the author of his own misfortune because of this proliferation of court cases. Mr. Kirk once sat there in front of me and told me he had about thirty running at the same time. The CPS know the difficulty and they please must address it and then we will avoid hearings like this.

So, under those circumstances, this Court is now closed and I will adjourn.

Mr. KIRK: Application for costs.



coming into the building. That is why I was late.

JUDGE JACOBS: I am not talking about that. I am talking about your non-appearances in front of Recorder Seys
Llewellyn. What I have done now is the best I can do justice for you, to ensure that you leave here entitled

to drive. I have done that for you.

Mr. KIRK: Chicken feed, absolute chicken feed, as to the truth of the matter. You are helping to cover up corruption, corruption in your own Court. You ordered disclosure and this disclosure has yet again been ignored by this Court. With one breath you say the Judicial Committee up in London have power of these cases and the next breath you decide to take over and change my sentence, without my consent, without my imparting any information other than by writing. I write everything in advance now to make sure that you lot cannot, as you all eat out from the same trough, cover up each other's corruption and distortion of truth. I have the names of each barrister who acts for the CPS. I don't accept that it is the CPS's fault. is sometimes but it is not the way that has been put by this Judge. Lawyers acting as barristers boast that

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occasions and I have seen your letters in which you impugn the integrity of a large number of people who are known personally to me. I make no other comment than this, that I just wish you would think before you speak. A lot of these people, all of these people, to the best of my knowledge are thoroughly decent people, they do their job as best as they can, they have their own wives and families, their own reputations and their own

Mr. KIRK: But they lie and cheat and pervert the course of justice.

personal lives.

JUDGE JACOBS: I will just add one other thing to you, Mr.

Kirk. In order to sort out your case today the Court

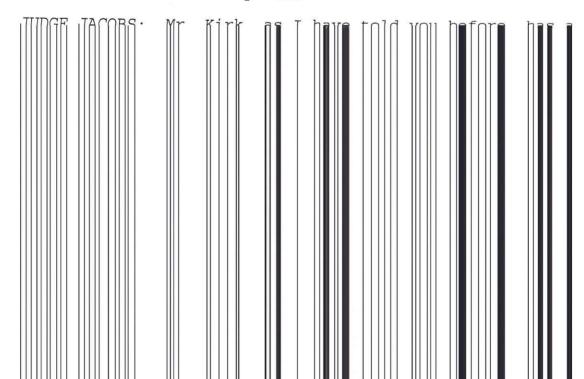
Manager, I know, has spent about two days on it. I have

spent about two and a half to three hours---

Mr. KIRK: I spent eight years of harassment by the local police.

JUDGE JACOBS: Mr. Kirk, you will listen to me.

Mr. KIRK: And I have watched a string of judges knuckle under to the corruption.



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children when they have to come as injured parties.

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Table of relevant motoring convictions - M Kirk

4 12 1999	Offence 1 2771999 2 881999 3 5 4 2000	Date of
2 1 2001	Court 22 3 2000 11 4 2000 &	T C
Vale of Glam	Fixed penalty Bridgend Cardiff M C	Court
Fail provide	No Ins Fail provide spec No insurance	Offence
L/E Disq s35	3 7 L/E 6 Disq s35	Result
Application 10 reinstatement	8 9 2000 Pending	Appeal Appeal

Please read in conjunction with transcript of ruling

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and the subject of a Successive appear on of	The fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as and the fixed penalty 21 / 1999 3 Points as a fixed penalty 21 / 1	Note - 27 1000 3 points is not the subject of any appear
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On 11 4 2000 Cardiff Magistrates endorsed the licence 6 points - they were unaware of the 7 points at

in in appeal against conviction on 8 9 2000. Thus the disqualification is incorrect. The defendant has appealed later became aware and disqualified for 6 months under s35 on 18 9 2000. They did not know that the point Court but the defendant has also appealed to the Divisional Court and Crown Court cannot therefore finalis=

On 2 1 2001 Vale of Glamorgan Magistrates endorsed the defendants licence and disqualified him under s3specimen – they disqualified him for 6 months under s35. The problem is that it was on a false basis alth⊂ disqualify him had they known the real facts. They relied on the 6 points imposed on 5 April. See letter now of an appeal to the Divisional Court. The defendant also seeks leave from the Crown Court to reinstant Cardiff Magistrates Court had already disqualified him on 18 9 2001 having revised the sentence albeit wrc

dismissed through his non attendance.