[BS614159 – MC65, CF101741, CF204141 AND 7CF07345]

MAURICE JOHN KIRK

Claimant

and

SOUTH WALES POLICE

Defendant

18 February 2011

Appeal against

DRAFT ORDER
of 30th November 2010 – by HHJ Seys Llewellyn QC
Sitting at Cardiff Civil Justice Centre

This Appeal is against the 28 January 2011 refusal of permission to appeal by HHJ Seys Llewellyn QC, which is the final decision of the 30 November 2010 Draft Order and Judgment on Preliminary Issues, where the Claimant was not present at the oral hearing. Proceedings of 30 November 2010 were concluded by additional written submissions.

Grounds for Appeal

Medical & Proceedings went ahead without the Claimant Able to take part

1. That the lower court was wrong to issue Preliminary Judgment as the Claimant was too unwell to prepare for or be at the preliminary stage. This is supported by the Defendant's four Forensic Psychiatry Reports on the Claimant and the Claimant's three medical reports.

2. A Judgment on August 2010 refused a postponement without more detailed medical evidence. When more detailed medical evidence was supplied, the situation became most confusing as considerable delays and change occurred, but there was no clear order or direction from the Court for the Claimant to understand what was happening, so he could respond or appeal.

3. The Claimant thought he was waiting for postponement and thought the intermittent hearings were for directions. but was then given a Preliminary Judgement. The Claimant was not well enough to prepare or be at those intermittent hearings of lengthy legal argument and had to leave on crutches.

4. On 30 November 2010 the Claimant could not be present due to medical grounds.

Unfairness and disadvantaged

5. The Claimant is not a lawyer, and cannot get a lawyer. He approached over 80 who all refused.

6. The lower Court is failing to protect the Claimant from the Defendant's lawyers, having had him arrested and using esoteric games to run up quite unnecessary and high costs.

7. The Claimant wanted to amend but had no advice to know how to, and was not well. So to comply with unfair pressure from the Court to keep up, he submitted a skeleton argument marked "interim" or "preliminary". This protest was ignored by the Court.

8. The Preliminary Judgement either wrongly decides facts or assumes a wrong set of facts in the preliminary stage, where the Claimant entirely disagrees with the assumed version of facts, yet has had no opportunity to rebut or challenge the assumed or decided facts.

Unfairly Excluding Evidence – A bullying case must hear all the facts

9. The Claimant believes this case is **fact sensitive**. The Claimant understands from Court of Appeal case law (*Cornellus v Hackney LBC 2002)*, that it is not possible for a lower court to strike out matters that are **fact sensitive.**

10. The Claimant feels the Preliminary Judgement is as fair as pulling a bucket of water out of an extreme flood, saying that one bucket is not extreme, when the issue is that the huge, sustained and seemingly indefinite flood is extreme.

11. The lower court is ignoring that this case is about unusual and intense developments for twenty years which are still ongoing.

12. The Claimant believes that it is common sense that Consolidation should have been the natural conclusion of the Judgement given that it considers both the fourth action and explores bizarre events around the disclosure of a MAPPA multi agency summary from 2009 and memos further indicating malice,

13. We believe Consolidation is a matter of a decision and fairness of allowing what evidence before court, and so a matter for the Court of Appeal.

14. The lower Court has been trying to whittle down the case, so the true long term bullying grievance and its extent will never be explored. The Claimant feels that this is entirely wrong.

The Lower Court is not responding to Key Submissions

15. The lower court has avoided commenting on a number of submissions including the key nineteen page submission that included most of the case law, for permission to appeal dated 22 December 2010, and also a similar earlier submission on EU proportionality, despite a number of communications as a reminder about this.

Lower Court Wrongly Avoids that this case is about balancing the Conflicting Principles

16. The Claimant believes the lower Court was wrong not to explore the conflicting principles.

17. The Claimant believes that the lower Court totally avoids the first set of principles that come from deciding what are the needs of the case, in the interests of justice, to give a claim a fair and just hearing. These principles were excluded from considerations and are not explored in the Orders and Judgement of 30 November 2010 to 28 January 2011.

18. The lower court could not explore the conflicting principles by restricting itself to only a small section of, when the case is quite obviously about twenty years of alleged police bullying and very much still ongoing. This abuse of power becomes more extreme with the passage of time. Hence it becomes easier to identify and understand the later events,

such as the machine gun, the threat to kill the Claimant, false imprisonments and the falsification of his medical records, for the purpose of obtaining a Section 41 under the 1983 Mental Health Act.

19. The Claimant believes the lower Court was wrong to use a flawed, unfair and too limited an application to traditional principles on *Hill*, collateral attack, *Hunter*, when was malice stated and public policy on a duty of care in negligence.

20. The lower Court has totally avoided the Claimant's comment on EU proportionality and also the imbalance in power between the state and the individual, including UK reasonableness and creeping power of certain elements of state authority in ways Parliament could not have known, nor would the electorate approve.

21. The lower court has totally avoided case law of *Waters* and to allow the opportunity to explore incremental change in UK public policy and laws of negligence.

22. The lower Court has not replied to seeking an incremental change to public policy and duty of care, for lawyers costs are a main factor that makes a legal dispute too expensive for the state to allow and shape public policy. Instead, reducing lawyers cost to improve access to justice is currently topical as measures to introduce reform.

23. The need for there being a Duty of Care is more easily understood in a consolidated case. Yet the lower court is avoiding Consolidation and whittles down the case, thus unfairly avoiding the stepping stone to establishing the need for a duty of care.

24. The lower Court has totally avoided commenting on how this case is also about police being dishonest in arresting or prosecuting the Claimant and examining public concern over police perjury (see submission 22/12/2010 with academic comment by Michael Zander QC) and evaluate what that might mean for a twenty year bullying case where police openly say "we will get the Bastard, driving around in his little white sports car talking human rights."

25. The lower Court has totally avoided that in a bullying case like this, as in *Waters,* the *Hill* principle does not apply to a refusal to investigate, as it is a deliberate failure to deal.

26. The lower Court totally ignores the *Waters* principle. Just because it has not been done before does not mean it cannot be done.

27. Regarding the *Hunter* principle: the lower court totally avoids exploring facts around oppression, duress etc which can mean the *Hunter* principle does not apply.

28. The way the lower Court is not exploring facts around oppression and duress would seem to be because a biased and prejudicial version of the facts is already being determined by the lower Court at the preliminary stage, which the Appellant believes is wrong.

29. Collateral attack/re-litigating – The lower court totally avoids the issue of revisiting but not challenging a conviction, when civil procedure rules allow this.

30. Collateral attack/re-litigating - This principle cannot be a blanket application, as the lower court attempts to say. The Claimant claims to include perjury. But this is also unacceptable, if not unlawful, as there are manipulations as part of a twenty year bullying case of very many incidents. That is quite different to collateral attack on a single conviction. The Claimant believes the Court should have looked at where the fine balance in conflicting principles should be managed, such as before a High Court judge with the case consolidated for all 20 years.

31. The lower Court has totally avoided looking at how later manipulations by the Defendant in their twenty years of alleged bullying merits a change to the principles in question.

32. The later developments are new developments and are new evidence which is seemingly so strong that they merit a re-evaluation of the whole case.

33. The Claimant believes the lower Court was wrong to avoid the public debate of misuse of unaccountable police powers, and how in a case of alleged bullying by police, spanning twenty years, where the sheer volume of incidents is unusual, that it is possible that there be a duty or care.

34. The Claimant was not present at a past criminal appeal trial that the lower Court has decided and insists it is fair to prove the lower Court's version of facts. Yet the Claimant is denied the opportunity to go into the facts with the lower Court.

35. The lower Court tries to assert the Claimant previously had a fair trial in incidents when convicted. This cannot be true as the Claimant had given up that the trial could be fair and had hobbled out on his crutches under the influence of his prescribed morphine sulphate.

36. The lower court tries to assert that the Claimant was not claiming malice. Yet in preliminary stage papers the Defendants criticise, almost to discredit the Claimant, for his long term claims of conspiracy. Has anyone ever known of a conspiracy of good will? A claim of conspiracy is almost always a claim of bad faith and malice. Yet the lower court again avoids the obvious evidence.

37. In *Waters*, the House of Lords ruled that as a bullying case they would allow her to claim malice.

Failure to protect the Claimant from the Defendant's mindset

38. The lower Court is failing to protect the Claimant from the obvious mindset that is against common sense – that the Defendant tries to repeatedly arrest and repeatedly imprison the Claimant, seemingly unlawfully, to interfere with this civil case.

39. As from 2009 when this case was listed again for trial, the Defendant imprisoned the Claimant on remand, trying for a mandatory firearms related ten year sentence, seemingly to thwart this civil case. It was over fine points of law in the legality of a sale of a near 100 year old pre-WW1 aeroplane Lewis machine gun attached to a vintage replica biplane. The Claimant was found not guilty, without the need for evidence being called.

40. The lower Court, failing to protect the Claimant from the obvious mindset that is against common sense - of having failed to imprison him by 2010, the Defendant is still desperately trying to jail in 2010 and 2011 over whether and how the Claimant handed court papers to court staff, (an ex-policeman) was a common assault. They ignored medical evidence for non-attendance and the Claimant was convicted in his absence and issued an arrest warrant.

41. The Defendant states the in the multi-agency summary that they will approach the various Court administrations and Government Departments to effect most prejudicially the Claimant's access to justice.

42. The Claimant, as from September 2010 to the present day and ongoing, has had rules changed so to issue an arrest warrant on 2 November 2010. It is still in place where no criminal lawyer, the Claimant and the Claimant's McKenzie team have contacted, can

understand how such a totally unique manipulation of rules, (that seem unlawful) are used only for the Claimant.

43. The Defendants write in the Multi Agency summary that they intend to shoot the Claimant if he approaches the Chief Constable (now retired), when the Crown Prosecution Service say, more than once, the Claimant is doing no wrong in trying to speak with the Chief Constable who is a major witness in his case.

44. But more serious is that when all three assessments say the Claimant is not dangerous and has never been convicted of a serious offence, the Defendant has placed the Claimant on ViSOR (one of the most dangerous people) and also deemed him a firearms risk. That means a real risk of any of the many armed police on the streets of Cardiff on seeing the Claimant to interpret a movement or hidden item as grounds to open fire and shoot and kill the Claimant. Yet the lower Court is desperate to say that these clear correct issues are not true.

45. When the Claimant is now in asylum in France, because of the mindset of the Defendant, the Court is still excluding essential evidence and then says in the preliminary judgement that the lower court cannot see how the case is extreme!

Failure of lower Court to use the Defendant's mindset as evidence in the preliminary stage

46. The events in this case are ongoing and substantially interfere with the claimant's ability to prepare and conduct his case. Yet the lower court still only wishes to hear only the early part of the case, as opposed to all of the case, and so excludes important evidence.

Set aside, and re-hear consolidated case in High Court

47. There is an onus on the Court to manage cases so the Claimant does not need to keep returning, yet the lower Court organises it so the need will remain to return endlessly, for years when it could be just one case.

48. The Claimant and his team believe the only real way to deal with such a far reaching failure in such a large case, is to set aside and order a re-hearing, which the Claimant ultimately seeks to be in the High Court.