

B2/2006/0388(A)

Neutral Citation Number: [2006] EWCA Civ 1433
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM KINGSTON-UPON-HULL COUNTY COURT
(RECORDER EKINS QC)

Royal Courts of Justice
Strand
London, WC2

Friday, 13th October 2006

B E F O R E:

LORD JUSTICE BUXTON

LORD JUSTICE SEDLEY

PAUL

CLAIMANT/RESPONDENT

- v -

CHIEF CONSTABLE OF HUMBERSIDE POLICE

DEFENDANT/APPLICANT

(DAR Transcript of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street, London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

MR N WILCOX (instructed by Legal Services Unit, Humberside Police) appeared on behalf of the Applicant.

MR N STANAGE (instructed by Messrs Hickman and Rose) appeared on behalf of the Respondent.

J U D G M E N T
(As Approved by the Court)

Crown copyright©

1. LORD JUSTICE BUXTON: This is an application for an extension of time for appealing from a case decided in the Kingston-upon-Hull County Court, sitting in Sheffield, and Mr Recorder Ekins QC and a jury, in which Mr Jason Paul the claimant, now respondent, sought damages from the Chief Constable of the Humberside Police in respect of various claims based on the arrest and initial charge of Mr Paul arising out of an incident that occurred as long ago as 1 April 1998. It is not necessary to go into the details of that incident, save to say that it concerned a matter that has become one of some notoriety, as we understand it: the death of a gentleman called Mr Christopher Alder, who died in the custody suite in a police station in Kingston-upon-Hull in April 1998.
2. Mr Paul had had previous contact, indeed previous violent contact, with Mr Alder on that evening and, to put the matter shortly, when he heard about the death of Mr Alder, Mr Paul, accompanied by his solicitor, went to the police station, as far as we can see, to offer assistance. He was arrested, initially he was told on suspicion of having caused Mr Alder's death, that charge being subsequently modified to one of causing grievous bodily harm. None of those charges were in the event proceeded with. It was Mr Paul's case that although there was in formal terms reason for the police to arrest and charge him, they had in fact been improperly motivated by a desire to deflect attention from the improper treatment and handling of Mr Alder and (as it also appears to have been alleged) to deflect attention from what was at least suspected to be acts of prejudice on racial grounds.
3. The proceedings were not issued by Mr Paul until March 2002. There was then a trial in July 2003 in which the Chief Constable was successful. Mr Paul appealed to this court and a retrial was ordered, that retrial (which is the trial of which we are concerned) starting on 16 January 2006. On 27 January the jury returned with favourable answers for Mr Paul to various questions that had been put to them by the learned recorder. A total award of £30,500 was made in his favour, a significant part of that comprising exemplary damages.
4. At the trial permission was sought to appeal in respect of various matters, of which Mr Wilcox, who appeared at the trial and who appears before us today, says the most significant was a decision by the recorder to allow the playing to the jury of a video recording of what had happened in the custody suite to Mr Alder and the fact of his death.
5. The admissibility of that video was resisted, as it would seem to me (having read the recorder's judgment admitting it) on the ground that it was irrelevant because no police officer had seen it, nor was any police officer who was concerned with the events aware of the detail of what had happened to Mr Alder. Perhaps it should be said that apparently the circumstances were distressing and went beyond the mere fact of a death in custody. The recorder was sceptical of that explanation, thinking it most unlikely that information about the way in which Mr Alder had died would not have reached the officers rapidly. Today, Mr Wilcox says that the video was only of marginal relevance because only one officer was shown in the event to have been to the police station and seen the outcome of the events before he dealt with Mr Paul. The main objection to it, and this is what Mr Wilcox says is the Chief Constable's main point should this matter be allowed to go

forward, was that it was highly prejudicial, and really changed the whole nature of the case. That is all that needs to be said about the background.

6. The problem for the Chief Constable is that he filed his appeal in this court out of time. At that time there was a limit of 14 days for filing the appeal, therefore, it had to be filed within 14 days of 27 January, and that limit was not achieved. It was true that it was missed only by a few days, but missed it was, and therefore the Chief Constable comes to this court in mercy asking for an extension. We have been of course reminded of the guidance given by this court in Sayers v Clarke Walker [2002] 1 WLR 3095 and taken through the checklist referred to by Brooke LJ in that case. That list is of course only a checklist and most of the items on it are, in the circumstances of this case, of little weight in determining how this court should exercise its judgement.
7. The overriding point in this case is a simple one. Not only was there a failure to comply with the limit, but also no good explanation has been given for that failure. The explanation that is advanced is effectively that a decision was taken to instruct leading counsel who had not appeared at trial. The matter of instructing him and receiving his advice took the consideration of the matter beyond the 14-day limit. That, in my judgement, simply will not do as an explanation, let alone a good one. First of all, as Brooke LJ pointed out when this application was before the court on an earlier occasion, it would have been possible to apply to the recorder for an extension of time. Mr Wilcox said that he did not do that because on 27 January the matter was in his hands not the lender's and (this is not quite how he put it but I think this was the force of it) he did not foresee that there might be the problem that eventually arose.
8. Two things about that. First of all in a case of this complexity, as it is alleged to be, it might well have been prudent to ask for an extension in any event. Secondly, when it became clear that there was going to be a difficulty, or might be, in complying with the time limit that was when an application could have been made. We are told that that would have been difficult because Mr Recorder Ekins was no longer sitting. There is no evidence that anyone actually thought that at the time, but even if that was so it would have been possible to make an application to the county court, when it could have been dealt with either by Mr Recorder Ekins ad hoc or by another judge of that court. None of that was done.
9. Secondly, we are told that, no doubt entirely properly, this was a matter that needed to be carefully considered at a high level, including apparently personally by the Chief Constable, because of the background to the case and the other enquiries that arose from it. That was already known on 27 January and institutionally the defendant should have made arrangements for that particular matter, if it was going to weigh with him in deciding whether to go forward and the length of time that the process would take. I am therefore satisfied that the requirements for an extension of time are not satisfied in this case.
10. I will say one other thing. If I thought that there was an overwhelming or very strong reason for thinking that an appeal would in any event be successful, I would allow that to

weigh with me in deciding whether I should act on my conclusion as to the legitimacy of the reasons given. But without going into it in any sort of detail, I cannot accept that Mr Wilcox's best point, that is to say the complaint about the custody suite video, falls into that category. As Sedley LJ pointed out in the course of argument, the challenge now is as to the exercise of the recorder's judgement in allowing the video to be played at all. That is no basis for saying that the point is so strong that it must be pursued, whether or not the appeal is in time.

11. I therefore for my part would not grant this extension of time.

12. LORD JUSTICE SEDLEY: I agree.

Order: Application refused.