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IN THE CROWN COURT
AT CARDIFF

Indictment No A20140005

The Law Courts
Cathays Park
Cardiff
CF10 3PG

7th and 8th April 2014

Before:

HIS HONOUR JUDGE CROWTHER QC

REGINA

- v -

MAURICE KIRK

MR SMYTH appeared for the Prosecution

The Defendant appeared in person

DISCUSSION ON NOTE TAKING

Tape transcription by **Mendip-Wordwave**
(Official Transcribers of Court Proceedings)
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DISCUSSION ON NOTE TAKING

(10.47)

MR SMYTH: May it please your Honour and your Honour's colleagues I appear for the prosecution in this case. As you can see Mr Kirk is representing himself.

JUDGE CROWTHER: Well let us pause for a moment because I think Mr Kirk is having difficulty in hearing. Would it assist if we had a hearing loop for Mr Kirk?

MR KIRK: Inaudible

JUDGE CROWTHER: Why don't you sit down Mr Smyth and we will see if that helps. Can you hear me Mr Kirk?

MR KIRK: Sorry?

JUDGE CROWTHER: Perhaps that answers the question. Can you hear me properly or not?

MR KIRK: I can't hear the prosecutor at all, but I heard what you just said.

JUDGE CROWTHER: I think there are speakers inside that dock. Why don't you sit down. Mr Smyth is going to speak into his microphone, and we will see how that works.

MR SMYTH: Mr Kirk, I was explaining that I appear for the prosecution in this case and you are representing yourself. Can I check, can you now hear me clearly?

MR KIRK: The name of the prosecutor please?

JUDGE CROWTHER: Mr Smyth. Mr Kirk, this is clearly inadequate at the moment. I am going to ask that we find some way that you can hear better. I know there is equipment in this building. Yes, that is what I have in mind.

MR KIRK: Can I suggest that I conduct my case outside this goldfish bowl?

JUDGE CROWTHER: The difficulty, Mr Kirk, is that almost every dock in this building is now secure for very good reason, and I am going first to look at other solutions which will

A allow you to conduct your case from within that dock. I am hoping to find some equipment that will allow you to hear.

MR KIRK: (Inaudible) could I ask, I understand my McKenzie friends and me have the (inaudible) to take notes. Am I allowed paper?

JUDGE CROWTHER: Yes. You should certainly have paper and some sort of writing instrument, of course you should.

MR KIRK: Am I legally entitled to my legal papers?

JUDGE CROWTHER: Where are your papers?

MR KIRK: I have been assured that they are at the bottom of the stairs below the court.

JUDGE CROWTHER: These are papers that have been brought by somebody else, are they?

MR KIRK: I have also been assured that there is a pair of glasses there.

JUDGE CROWTHER: Right. I do not know what those papers are, and I am not going to say that papers which I have not seen should be passed into you. Do you have any glasses in custody? You had glasses when you appeared before Judge Rowlands, did you?

MR KIRK: Sorry, I had glasses when?

JUDGE CROWTHER: Did you have glasses when you appeared before Judge Rowlands recently?

MR KIRK: There is quite a track record of my getting glasses from (inaudible) have been refused. They have been refused from the public gallery, the witness is here in court at the moment to confirm the judge refused to let me have my glasses. This has been a situation that has gone on for some years. I have, for example, the last six judges going back to the (inaudible) in the trial when I was acquitted, I was refused my legal papers at the foot of the stairs in my cell. I would meet an unambiguous reply from this court will I be allowed to have my legal papers to conduct my defence in this British court.

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A **JUDGE CROWTHER:** I do not know what you mean by your legal papers, Mr Kirk. Are these notes made by you, or is this something that somebody else has prepared on your behalf?

B **MR KIRK:** If I could try and remember that question but go back a point in order that we need some semblance of organised discussion, am I legally entitled to the court and custody records relating to the lower court that is now subject to this appeal?

C **JUDGE CROWTHER:** Mr Kirk, would you answer my question. Are these papers that you have prepared, your notes, that sort of thing or are they materials that have been prepared by others on your behalf?

MR KIRK: Prepared by who?

JUDGE CROWTHER: Others.

D **MR KIRK:** Others. Well they are court exhibits, your Honour, and there is my (inaudible).

E **JUDGE CROWTHER:** Yes. You can have, Mr Kirk, any papers that were prepared by the prosecution for the purpose of the Hearing in the Magistrates Court and any notes that you have made, which I expect are in your cell, are they?

F **MR KIRK:** Your Honour, it is over a year now that I have been attempting to get documentation from the prosecution to which you refer, correspondence with my (inaudible) lawyers, (inaudible), myself. I will have some papers that are, of course, at the bottom of the stairs.

JUDGE CROWTHER: Let us try and make things easier if we can. Have you been handed the headset? Why don't you try the headset, Mr Kirk. Does that help to any extent?

G **MR KIRK:** (Inaudible)

H **JUDGE CROWTHER:** Well what I propose to do for the moment, Mr Kirk, is that we will hear the opening of the case from Mr Smyth, and then I will listen to any applications you want to make, alright?

A **MR KIRK:** (Inaudible)

JUDGE CROWTHER: Thank you very much. Mr Smyth?

B **MR SMYTH:** Your Honour, this is an appeal against a conviction by the Cardiff Magistrates on 10th December of 2013 in respect of an offence of common assault. The prosecution say that on 21st September 2013 at Her Majesty's Prison at Knox Road, Cardiff the Appellant, Mr Kirk, assaulted by beating David Rogan, a prison officer at that establishment since 1994.

C It was at about 13.20 in the afternoon that Mr Rogan, who was on duty in the gate area, saw Mr Kirk immediately outside the prison entrance, that is the entrance to the area where people come in the first instance. Mr Rogan saw Mr Kirk walk to an area ...

D **JUDGE CROWTHER:** Would you pause please. No one in the public gallery has permission to take notes. I will hear any application made by any person interested in taking notes, but henceforth any taking of notes without permission will be regarded as a contempt of court and will be dealt with as such. Thank you.

E **MR SMYTH:** Mr Rogan saw Mr Kirk ...

F **MR KIRK:** My friends have (inaudible) to get their costs for the last aborted jury trial to take notes on my behalf because I have neither pen nor paper nor a pair of glasses in order to take notes myself, and I am still devoid of papers from the lower court that were promised by the last court on 31st March, when it was clearly made a statement unambiguous by the Crown Court Judge that I would be entitled to have court and custody records of the lower court in order to relate to an appeal such as this, your Honour. Sorry to intervene.

G **JUDGE CROWTHER:** No, we will consider your application, Mr Kirk. We are prepared to let one of your supporters, Mr Kirk, sit in front of the dock to take notes, which will at the conclusion of the case be surrendered to you or be surrendered to the custody of the court. That does not include, of course, any notes relating to your conduct of the case. But none of the notes

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A prepared by your friend are to leave this courtroom either with you or, forgive me, none of them are to leave the courtroom unless it be with you. Do you understand?

MR KIRK: (Inaudible) but at adjournment I may be able to take notes with me back into the cell.

B **JUDGE CROWTHER:** Well that is a matter for the custody staff. I do not know what their decision might be as to that, but it seems to me that it would assist your preparation of your case if you were able to do so. At some stage I would like to know the custody staffs' view of that please. Thank you.

C **MR KIRK:** But previous judges in this Cardiff Court have repeatedly refused. I don't understand to which part of the law you refer that entitles me to have notes relating to this trial being in my possession when I go to my cell.

D **JUDGE CROWTHER:** Well, you will now have a note taken, Mr Kirk, and I am going to continue to hear the opening. Thank you.

...

E (14.46)

...

F **JUDGE CROWTHER:** No, I said to you at the very start that you should see any documents that were prepared by the prosecution in the way of papers for the Magistrates Court Hearing. You told me you could not see them.

MR KIRK: I still haven't seen them. Could I have them please? I said this at the very beginning.

G **JUDGE CROWTHER:** Yes, Mr Kirk, and I said you must have them and you told me then that you would not be able to read them, but here they are.

H **MR KIRK:** At least I have possession of them now. The fact that I can't read them because the prosecution and the prison alternately each time I come to this court in the last nine months

A have taken away my legal papers, laptop, passport and my reading glasses, and we have to have
this (inaudible) throughout the (inaudible) into the second day where the prison then get told
overnight, "He is now allowed to have his glasses." Could I therefore ask at this point in order
B that I am now in possession of three pages purported to be the S9(?) of the complainant, Mr
Rogan(?), to get access to my glasses which are being held by the court custody staff at the
bottom of the stairs.

JUDGE CROWTHER: What here?

C **MR KIRK:** Yes. Well I said this this morning.

JUDGE CROWTHER: Dock officer, are his glasses in the building?

DOCK OFFICER: I couldn't say, your Honour, but I (inaudible)

D **JUDGE CROWTHER:** Could you make the enquiry please?

DOCK OFFICER: Certainly.

MR KIRK: Could I ask for my legal papers to save time, that are at the foot of the stairs?

E **JUDGE CROWTHER:** As I said to you this morning, if those are papers which have been
brought in by others today, no.

MR KIRK: Brought in today, is that (inaudible).

F **JUDGE CROWTHER:** I said to you this morning you are entitled to papers that were
generated for the purpose of the Magistrates Court Hearing. If you have made notes within
custody for the purpose of this Hearing my view is you should have those too. But what I am not
going to say is that you should have papers which have been brought in by others on your behalf,
except those notes which are being taken today and fed to you by your Amanuensis as they are
G made.

MR KIRK: With respect I consider that a little unfair in the light that I have only heard today
that they are bringing in more prosecution witnesses, and they are coming in not just with new

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A paperwork, they are coming in with new advisers(?) to give evidence on oath. I find it, I am disappointed.

B **JUDGE CROWTHER:** Mr Kirk, the witness to which you refer is a prison governor. You had, as I understand it, sought to secure the attendance of the prison governor yourself. The prosecution is therefore doing something which you said you wanted done in any event. But we will come to that as and when we reach Miss Rowe's evidence. Would you please continue to ask your questions of this witness. My note is as follows, that you challenged him as to whether you had shouted and he said you had. You challenged him as to whether you had said citizen's arrest or private person's arrest, and he said, "I believe it was a citizen's arrest." Would you like to carry on from there?

C **MR KIRK:** The governor will be told not to produce the documents that I have been asking for to be attached with the witness, the witness being anybody's property and the documents of course will get to the heart of the matter that is before this court.

D **JUDGE CROWTHER:** And I will hear any such application at the proper time, which is likely to be after she has given evidence-in-chief. But we must reach that stage, Mr Kirk. It is important therefore that you continue to cross-examine this witness.

E **MR KIRK:** Well without my glasses, your Honour, I remain (inaudible).

F **UNKNOWN MALE:** (Inaudible)

JUDGE CROWTHER: Thank you very much indeed.

MR KIRK: Could we while we are waiting cover some other issues (inaudible).

JUDGE CROWTHER: Do you want to sit down, Mr Rogan?

G **MR ROGAN:** Thank you Sir.

MR KIRK: How many prosecution witnesses because Mr Watts is very important. He is giving his evidence?

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A **JUDGE CROWTHER:** Mr Smyth, who are you calling please? I remember Mr Young is not available. We discussed that at the Case Management Hearing.

B **MR SMYTH:** Your Honour, the witnesses to call are the two officers who attended at the vehicle lock, spoke to this witness and then arrested Mr Kirk. They are PCs Mason and Howe. The only other witness I have available to call is Miss Rowe.

JUDGE CROWTHER: Yes, thank you.

MR SMYTH: As to the interview I am simply going to read his statement.

C **JUDGE CROWTHER:** Yes. Well you have heard that, Mr Kirk. There are three witnesses after this one.

D **MR KIRK:** Your Honour, yes. Am(?) I going to be allowed to call the third police officer that was at the scene?

JUDGE CROWTHER: Now, Mr Kirk, I remember this very well indeed. At the last Hearing when I offered you this date or a later date in April, but told you that PC Young was not available for this date, you told me that you no longer required to cross-examine him.

E **MR KIRK:** Yes because you were going to give me the video and the transcript of my interview. (Inaudible) and thank you for reminding me. Could I please overnight have access to see the interview?

F **JUDGE CROWTHER:** Glasses are not here, Mr Kirk. That is the information I have.

MR KIRK: They were taken off me in the prison. I am happy to suspect that a pair that I also hid in amongst my legal papers, if my legal papers have come to court, are deposited in the, what do you call it, the spine of one of the Lever Arch files containing the evidence of the conspiracy by the South Wales Police (inaudible).

G **JUDGE CROWTHER:** Is there a bundle of papers from Mr Kirk?

UNKNOWN MALE: (Inaudible)

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A **JUDGE CROWTHER:** Right, well I will adjourn for you to do it and Mr Kirk can be taken down whilst you do it. Mr Kirk, I will continue to hear from you when this has been resolved. Thank you very much, you can go down with the officers.

(Court adjourned 14.53)

B (Court reconvened 15.30)

MR KIRK: Your Honour, now that I am allowed to have a pair of glasses could I now have my repeat request for pen and paper please?

C **JUDGE CROWTHER:** I think you should have a pen and paper, Mr Kirk, yes, and you Sir can now stop taking notes and return to the public gallery. Thank you very much.

MR KIRK: I have changed my plan. I don't want to take notes.

D **JUDGE CROWTHER:** No, Mr Kirk, that is the way we are doing it, Mr Kirk.

MR KIRK: (Inaudible).

JUDGE CROWTHER: That is the way we are doing it. Thank you Sir. Return to the public gallery, no more note taking by you.

E **MR KIRK:** (Inaudible) and my pad on the floor outside this goldfish bowl. I ask that my McKenzie friend take notes. He has travelled a long way, and it would be quite improper (inaudible) respect for him to be prevented from taking notes.

F **JUDGE CROWTHER:** No Mr Kirk. You indicated to me you were now able to take your own notes. Whether you choose to do so is a matter for you. No one else in court will take notes. Thank you.

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G (Court adjourned 16.43 until 8th April 2013)

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(11.17)

Cross-examination of Mr Rogan by Mr Kirk (continued)

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...

MR KIRK: Were you in charge of the gate the day before the incident?

MR ROGAN: Without my diary from last year I couldn't tell you if I was on duty on 20th September.

C
MR KIRK: Are you not aware that we made applications many months ago for disclosure of your work schedule?

MR ROGAN: No I was not.

D
JUDGE CROWTHER: His awareness of that is nothing to this case, Mr Kirk. He either remembers it or he does not.

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MR KIRK: (Inaudible) Was he approached by senior staff to fill in the forms required under my applications for abuse of process, disclosure under Section 8, whatever and also the continual request that the case be moved to Bristol?

JUDGE CROWTHER: Were you approached by senior staff to fill in the forms?

F
MR ROGAN: No Sir, but my details are printed off and logged and kept, but I haven't been asked for permission or anything to release them.

JUDGE CROWTHER: Thank you.

MR KIRK: On the Clerk of Court's notes it says "OCG Read", who I think I saw this morning opening my door so I wouldn't be late for court, "was in charge of the vehicle lock."

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JUDGE CROWTHER: Madam, will you stop taking notes please. Tom, would you retrieve the notes from the lady.

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MR KIRK: Excuse me, that is my lovely first wife, whom I should never have divorced, and I didn't even know she was here. Well in that case I won't take any more notes because she has

A come because she is not just educated, she is capable of making far better notes than me, and my
pen is now on the floor of the courtroom, so I cannot take notes, and I would ask that Janet be
allowed to take notes. And as I understand it you are confiscating her notes.

B **JUDGE CROWTHER:** Yes that is right. Mr Kirk ...

MR KIRK: Just like they did in the jury trial recently ...

JUDGE CROWTHER: Mr Kirk has put his pen through the aperture between the glass so
that it has fallen beyond his reach. If at any stage he wants one he must be given one.

C **MR KIRK:** I am obliged.

JUDGE CROWTHER: No one in the public gallery has permission to take notes without
my leave. No leave has been asked, and given that Mr Kirk is, since at least the middle of
D yesterday afternoon, in a position to see, to write and to make notes, it would take very special
circumstances for leave to be given. I say also that anyone using a recording device in court will
be treated as in contempt of court. Let us continue.

MR KIRK: I make application, I had no idea Janet had arrived in court, I make application
E that Janet Kirk may take notes, as was allowed in the precious time she could spend in the last
jury trial.

JUDGE CROWTHER: No, Mr Kirk, you are in a position to keep your own notes.
Whether you choose to do so or not is a matter for you.

F **MR KIRK:** Her notes are not only readable, they are comprehensive.

JUDGE CROWTHER: You may have her notes if you want them.

MR KIRK: Thank you. Having reconsidered the legal implications of that would you please
G consider my application that I am asking her to takes notes?

JUDGE CROWTHER: No, but you can have your pen back if you want it.

MR KIRK: No I don't want my pen back.

H **JUDGE CROWTHER:** There we are. We will continue.

A **MR KIRK:** I make application for this case to be tape recorded.

JUDGE CROWTHER: This case is being tape recorded.

MR KIRK: No, no, to be tape recorded like in other civilised countries, where the defendant
B or the applicant in civil and criminal proceedings is given a CD, one of these, one of these.

JUDGE CROWTHER: I have seen one of those, Mr Kirk.

MR KIRK: Yes.

JUDGE CROWTHER: The tape is running. It is an electronic system. Transcripts are
C available to anybody who wants them and for a modest fee.

MR KIRK: Yes. They often come corrupted and the most important points that are raised
D with words written on the transcript “inaudible.” I have got a library of the last 20 years of
Cardiff’s so-called purported accurate record. In America and other countries that in the days
when we had a judicial system for which we were proud copied our systems, except they have
E updated them and allow members of the public to have a tape recording of the proceedings to go
away with at the end of each day. I therefore, until that is introduced, I ask that tomorrow
someone comes and puts their tape recorder on the front desk, which has been allowed by his
Honour Judge (inaudible) Llewellyn QC, on matters relating to alleged perjury or purported,
F sorry, with the serious(?) risk of perjury, the same police officers that are identified in the MG6
and MG7 of the previous jury trial.

JUDGE CROWTHER: No, I have considered Section 9 of the Contempt of Court Act and
Section 9(2) and leave is refused to make a tape recording of this. The reason is that the official
tape recording and transcript is sufficient. Thank you, Mr Kirk. We will continue now.

MR KIRK: If I had legal representation I would be entitled to it, wouldn’t I? My barrister
G would be able to listen to those tapes at lunch time, in the afternoon, in the evening, but the
officers of this court seem to have free access, but I as a litigant in person am denied everything
H down the line, blackmail, blackmail to use a local lawyer. When I can find one I can trust I will.

A And there is an outstanding legal aid application which your court and the Magistrates Court is sitting on. I have the audit trail with me and they have deliberately refused to process, whether I am eligible or not, they are too frightened to expedite. Could that be considered for tomorrow morning, your Honour?

B **JUDGE CROWTHER:** Well, first of all we are not sitting tomorrow or on Thursday. Second, grant of legal aid is entirely a matter for the Magistrates Court and not for the Crown Court at the moment. I am not in a position to help you, Mr Kirk.

C **MR KIRK:** Well, if you aren't able to help me to have legal representation, and you don't have any power over the Summary Hearing that was before us or the disclosure of the documents from the Magistrates Court, not even from the Prosecution Service to even read what the case is about before he comes from Bristol, who can I approach whilst in custody in prison to make the D Magistrates Court expedite the five currently waiting appeals? Most of which should have been dealt with before this Hearing.

E **JUDGE CROWTHER:** Mr Kirk, my concern is that this appeal is expedited and dealt with efficiently. We have a witness in the witness box who is here to be cross-examined. Would you get on with cross-examining him please.

F **MR KIRK:** So you are refusing to assist on the legal aid application. Thank you, your Honour.

UNKNOWN FEMALE: (Inaudible)

JUDGE CROWTHER: No, not at this stage. We are in the middle of court proceedings. I am not taking submissions from the public gallery.

G **UNKNOWN FEMALE:** (Inaudible)

JUDGE CROWTHER: No. Yes Mr Kirk, please continue.

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A We hereby certify that the above is an accurate and complete record of the proceedings, or part thereof.

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Signed: Mendip-Wordwave Partnership

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