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IN THE CROWN COURT
AT CARDIFF

Indictment No.A20140005

The Law Courts
Cathays Parks
Cardiff
CF10 3PG

8th April 2014

Before:

HIS HONOUR JUDGE CROWTHER QC
SITTING WITH JUSTICES

REGINA

- v -

MAURICE KIRK

MR CHRISTOPHER SMYTH appeared for the Prosecution

THE DEFENDANT appeared in person

PROCEEDINGS

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(Official Transcribers of Court Proceedings)
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PROCEEDINGS

JUDGE CROWTHER: Does the list office have your availability, Mr Smyth, for dates

...

MR SMYTH: There is a date being discussed of 30th June.

JUDGE CROWTHER: That was being discussed.

MR SMYTH: I have some availability before that, but possibly not for a long enough period.

I imagine also your Honour and your Honour's colleagues have gone into that, it seems a long way off, but on the other hand better to pick a date that we are all free for.

JUDGE CROWTHER: Absolutely. Well, I will make enquiries now and, Mr Kirk, when I come back in, I hope to be able to tell you to which date this case will be adjourned after today.

MR KIRK: Your Honour, my custody relates to the outcome of this trial.

JUDGE CROWTHER: I do not think it does, Mr Kirk.

MR KIRK: The outcome has already been settled, like the original harassment case, by a High Court judge and the running of the next one, which is the main one, that is my arresting the prosecutor for falsifying information before His Honour Judge John Curran on 3rd and 4th May 2012, covered by numerous witnesses and statements already gone to London, for this case to be delayed for any period of time would be an abuse of process ...

JUDGE CROWTHER: Well, I will hear that application, but I think, Mr Smyth is going to tell me that your remand in custody is largely predicated upon your conviction of an offence before His Honour Judge Rowlands three weeks ago.

MR SMYTH: It is solely based on that and neither this nor any other case that is pending, other than the one your Honour mentions, has any issue of custody attaching, it being an appeal.

A **JUDGE CROWTHER:** No.

MR SMYTH:I can assure Mr Kirk that I am as anxious as he is that we resolve any outstanding issues before His Honour Judge Rowlands. There is no reason, in my submission, to delay that process any longer.

B **JUDGE CROWTHER:** Yes.

MR SMYTH:And I shall make it my business to see if we can have that relisted as soon as possible.

C **JUDGE CROWTHER:** Well, of course we do not know what sentences are in an appeal against conviction.

MR SMYTH:It certainly does not affect his release.

D **JUDGE CROWTHER:** But given the hearing date, even if there were a lengthy custodial sentence, we would be way beyond it.

MR SMYTH:This case does not impact on his custody status.

JUDGE CROWTHER: No. When is sentence fixed in the other case?

E **MR SMYTH:**It is not. Your Honour is hearing about matters ordinarily you would not hear about.

JUDGE CROWTHER: Well, I am aware of that, but Mr Kirk has raised them and I cannot tell him to be quiet, can I?

F **MR SMYTH:**If I am being circumspect, it is only to try and ...

JUDGE CROWTHER: I appreciate that.

MR SMYTH:But there is no date and, as I say, I will try and have that matter relisted as quickly as possible, so that it can be resolved.

G **JUDGE CROWTHER:** Yes. So your liberty, Mr Kirk, does not depend upon the relisting of this case, it depends entirely upon decisions to be taken by another judge.

H **MR KIRK:** Could I just have the date when that was decided?

A **JUDGE CROWTHER:** Well, it is not a question of that having been decided, you are not remanded in custody in respect of this appeal. That is right, is it not, Mr Smyth?

MR SMYTH: Absolutely right, indeed.

B **MR KIRK:** I am not familiar with what I am appealing for. It was a custodial sentence and it was never said to me or served on me and the District Judge said, "Well, you've served whatever it is," but now it's becoming relevant in the light of what has just been said in the last two minutes, because if that is the case, why wasn't my sentence considered on the day of the jury trial?

C **JUDGE CROWTHER:** I can answer that, I am sure, because a judge who had heard that trial and potentially made comments to you probably wanted to recuse himself from further involvement in your cases, I would imagine. Is that right, Mr Smyth, something along those lines?

D **MR SMYTH:** I am afraid I have lost track of the point being made here.

E **JUDGE CROWTHER:** Mr Kirk said, "Why did Judge Rowlands not deal with me on the last occasion in respect of this?"

F **MR SMYTH:** He adjourned because he thought an appeal was coming up rather more quickly than it turned out to be the case and I think with a hearing so imminent, I think he felt more comfortable in seeing what happened there for sentencing. But were it not for the imminent hearing, I would have suggested there is no reason to adjourn. He has not, for example, asked for a pre-sentence report.

JUDGE CROWTHER: No.

G **MR SMYTH:** So my invitation to ...

JUDGE CROWTHER: So it can be listed before Judge Rowlands as soon as possible?

MR SMYTH: Exactly, and my invitation would be to proceed to sentence if Mr Kirk agrees.

H **JUDGE CROWTHER:** Yes.

A **MR SMYTH:** Indeed, I wonder whether Friday might be a suitable occasion for that, given that I am free now?

JUDGE CROWTHER: Yes.

B **MR KIRK:** If I may raise an outstanding matter of six or seven years, the forensic history is false. Each time I come to a court of law in Cardiff, I ask for the police to correct the information that a judge or district judge or lay magistrates look at when considering sentence.

C **JUDGE CROWTHER:** Well, we have seen none of that, Mr Kirk, you see, because it is regarded as important that we do not know that, lest it affect our judgment in this appeal.

D **MR KIRK:** No, but your Honour, due to my slowing down, due to anno domini or whatever the expression is, so much has been thrown at me in these last few minutes of today's proceedings where you are concerned, (a) there is the appeal of my arresting the prosecutor, which is far, far more important than this, with respect to this court, an apparent sideshow in the abuse of my friends who have been sitting in the gallery.

E **JUDGE CROWTHER:** This what? I am sorry?

MR KIRK: The date of the appeal of my arrest under CCTV cameras on purpose, on purpose, has not even been listed for a hearing.

F **JUDGE CROWTHER:** No, well I dealt with the case management hearing and we sent that to Bristol, didn't we?

MR KIRK: Yes, but there is no date.

MR SMYTH: There is a date for further directions.

G **MR KIRK:** No, no, a date for the hearing. Last time they did it on an assault charge, they got it out of the district for publicity's sake and they sat on it for two years and then the CPS looked at it in Bristol and realised it was a can of worms and dropped it, but in the meantime I'd spent many months in custody on a falsified drummed-up forensic history, which is why

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A Judge Rowlands will be His Honour, will be given a list of, of my forensic history, not for this
court, it is for ... well, it is actually, at the end of the case, but I meant for Judge Rowlands to
deal with it on Friday. I want the police to agree that the forensic history ... I, for example,
B have a photograph on my website and above the names, the picture of two gendarmes when
I'm being sectioned under the Police Mental Health Act because the South Wales Police told
them to lock me away and above that on my website there is a printout of custody records
C here, where it is stated that I was related to being a sex offender. Now it's words like that and
expressions like that have been bandied around in court records that have affected lay
magistrates who are given very short notice at the end of a motoring offence, or whatever it is,
to look at the forensic history. I've had 30, 40 years of this where the police slip in the
D vengeance by slipping in documents that lay magistrates don't have time to check their, their
credibility. And because I have a barrister in the room whose performance on getting
information out of that last witness made my day, this might explain why it was his document
in the first place. I am asking that before we come to court again, outstanding matters of
E disclosure be expedited and that my forensic history be sorted for His Honour Judge
Rowlands, who knows nothing about this conversation, and it will save me having to raise it
on Friday and ask him for an adjournment.

F **MR SMYTH:** If Mr Kirk would like to indicate where he thinks the record is inaccurate, I
will investigate.

MR KIRK: Thank you, your Honour, I can ask for no more.

G **JUDGE CROWTHER:** Yes, well we will adjourn now and I will make enquiries as to
the date when this case can recommence and as to how long we will be given for the
continuation of the case. On reflection, Mr Smyth, I am not sure we should hear the interview
out of order.

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A **MR SMYTH:** No, I am grateful. I had the same sense that it may be inopportune, but what I would like to do before we finish today, given the likely break or the length of the adjournment, is to just run through the exhibits and make sure we have them all identified ...

B **JUDGE CROWTHER:** Yes.

MR SMYTH: ... and we have them all catalogued on the court file.

JUDGE CROWTHER: Well, let us take five minutes so I can make a telephone call and we will come back at something like 25 to.

C **MR KIRK:** That does raise one small matter, your Honour. His Honour Judge Seys Llewellyn ordered the prison to give me facilities for my laptop to play CDs of information relating to criminal cases which I have won with rapid succession in Barry Magistrates, before they closed it down. By the way I was one of the very first there 40 years ago on the way to Ireland, for which I was found not guilty, landing my aircraft at Cardiff Airport. The paint was still wet on the doors. I consider you have raised an issue that needs ... now I have forgotten what I ... sorry, I am tired, I have forgotten what I am talking about. Sorry, your Honour.

D **JUDGE CROWTHER:** It is all right, not at all. You were talking, I think, about the record which you say is not correct. We will come back in ten minutes. I will be able to give you a date for the adjourned hearing, but even if it is a long date, Mr Kirk, you can be assured that the conduct of this case is not keeping you in custody, all right? The only thing keeping you in custody is the case heard by Judge Rowlands and perhaps, Mr Smyth, you might be able to speak to the list office in the break as well and see when that can be listed for Mr Kirk's sentence. I will make enquiries of them as well now.

E **MR SMYTH:** Thank you very much.

F **MR KIRK:** Would it assist the situation if I made an application of abuse of process?

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A **JUDGE CROWTHER:** We will deal with any application for abuse as and when we know the date, because length of delay will obviously be important to that application.

(3.26 pm)

B (3.42 pm)

JUDGE CROWTHER: Yes, Mr Smyth, Mr Kirk. Judge Rowlands can (inaudible) the sentence that is outstanding on Friday of this week. Does that suit you, Mr Smyth?

MR SMYTH: Your Honour, yes.

C **JUDGE CROWTHER:** Yes. Well, I will ask then that your sentence in that matter is listed on Friday, Mr Kirk, which I hope gives you some reassurance that you will have certainty as to the disposal in that case.

MR KIRK: It is far from disposed, your Honour, it has only just started.

D **JUDGE CROWTHER:** Well, I am afraid I can give you less comfort in respect of this case. The first date that all the parties can be reassembled is Monday 30th June, but there is then a clear slot for this case to continue. As I said earlier, whilst I regret such a long adjournment, this is a case in which the Notice of Appeal suggested it would be disposed of within five hours, not the five days that is now looking ...

E **MR KIRK:** None of my doing, I was never asked to ... I am never asked how long a case, my appeals will take. I've never been allowed to indicate in advance, because I am, at the end of the day, a taxpayer and of course there are the outstanding appeals which the prosecution are pretending, the Cardiff Prosecution Service are pretending they have no knowledge of. There are at least four, I said five this morning, I think it's four. They could at least be expedited because they all relate to all outstanding cases.

F **JUDGE CROWTHER:** First things first, I have a document with your signature on it, which says, "In the Crown Court I expect the appeal to take five hours." But let us put that

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A aside. As to any appeals the Crown Prosecution Service does not know about, I do not know about them either.

MR KIRK: Yes, that document is out of context, but I hear what you say.

B **JUDGE CROWTHER:** And so this case will now be adjourned until Monday 30th June, unless anybody wants to say anything else?

MR SMYTH: Not on my part, thank you.

JUDGE CROWTHER: Mr Kirk?

C **MR KIRK:** Well, there is a point when I must make an application of an abuse of process, but the problem is I did not anticipate it today. I am afraid I took your word that no case to answer must come at the end of prosecution and not before, but I now realise that an abuse of process application of course can be done at any time and I already put one in last year.

D **JUDGE CROWTHER:** Yes.

MR KIRK: But now we have heard the evidence of the two prison officers, of course it is appropriate now, but I do not have access to the facts unfortunately.

E **JUDGE CROWTHER:** No. Well, if there is to be an abuse of process argument, Mr Kirk, it would be very helpful if you could make your arguments in summary form in writing over the adjourned time ...

MR KIRK: Yes.

F **JUDGE CROWTHER:** ... so that we could consider them in advance, but it is entirely a matter for you. I cannot order you to, you are not a lawyer.

G **MR KIRK:** No, it is all to do with whether I am in custody or not, because my problem is that in custody, as you now realise, me staying in the very prison where I had arrested an officer with sincere intent to get my passport, unless I am transferred to Bristol, which is what I have been asking for for many months, I am going to be further hampered in preparing my civil damages claim, which is being waited upon by His Honour and outstanding criminal

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A cases, now including this one. Until I'm transferred for release, I can't promise anything
being created out of Cardiff Prison.

JUDGE CROWTHER: No. Well, as I say, it would be useful if you could do it, but
B otherwise we will simply hear your application for a stay on the grounds of abuse of process
at the proper time.

MR KIRK: Yes.

JUDGE CROWTHER: Mr Smyth, this is though, is it not, as a rehearing of a
C magistrates' trial, one of those situations where our power to stay for abuse is limited to
situations where it would be impossible for the defendant to be fairly tried and we are not, as I
understand it, just as the magistrates would not be, empowered to stay on the grounds that it
D would draw the criminal justice system into disrepute? We do not have that supervisory
jurisdiction on an appeal from the magistrates, do we?

MR SMYTH: I would like to look at that before ...

JUDGE CROWTHER: Yes, because in the court below, the magistrates can only stay
E for abuse in circumstances where it would be impossible for the defendant to have a fair trial
because the supervisory jurisdiction resides in the High Court, so far as the Justices are
concerned, does it not? Think about it.

MR SMYTH: Yes, I would not like to commit without looking at it. Obviously if Mr Kirk
F wants to put anything in writing, I will be in a position to respond.

JUDGE CROWTHER: Yes, of course. Well then, Mr Kirk, so far as this case is
concerned, it is adjourned until 30th June. So far as the case involving Judge Rowlands, that
G will be heard on Friday of this week. Anything else I need to say, Mr Smyth?

MR KIRK: Well, just the CD that has been promised before the end of ...

JUDGE CROWTHER: Well, that has been promised to you and I am not going to
H interfere with that ...

A **MR KIRK:** No, no, I am asking that you get the prison ...

JUDGE CROWTHER: Mr Smyth has, I think, retained your confidence when it comes to matters of disclosure and that is because of the approach he has taken, so I am going to trust him to do what he has done throughout.

B **MR SMYTH:** Well, before Mr Kirk leaves the dock, I will hand him a copy.

JUDGE CROWTHER: Thank you very much.

MR KIRK: It is no use to me unless you can order the prison

C **(Recording ends)**

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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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