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**IN THE CROWN COURT**  
**AT NEWPORT**

**Indictment No. A20140005**

The Law Courts  
Faulkner Road  
Newport  
South Wales  
NP20 4PR

**30<sup>th</sup> June and 1<sup>st</sup> July 2014**

Before:

**HIS HONOUR JUDGE CROWTHER QC**

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**REGINA**

- v -

**MAURICE JOHN KIRK**

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**MR SMYTH** appeared for the Respondent

The Appellant appeared in person

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**ALL PROCEEDINGS**

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**30<sup>th</sup> June 2014**

A

**INDEX**

**PC 5378 ANDREW MASON – Sworn**

B

**Examination-in-Chief by MR SMYTH 20**

**Cross-examination by The Appellant 25**

**PC 5146 VICTORIA HOWELL – Sworn**

C

**Examination-in-Chief by MR SMYTH 52**

**Cross-examination by The Appellant 55**

**Re-examination by MR SMYTH 58**

D

**Further cross-examination by The Appellant 59**

E

F

G

H

**ALL PROCEEDINGS**

(10.13am)

**THE APPELLANT:** ... pen and paper, please?

**JUDGE CROWTHER:** Well, sit down, Mr Kirk, I want to ask first of all if, my first question was going to be if you have got everything you need. You are not wearing any glasses. Do you have any?

**THE APPELLANT:** Your Honour, I am sorry, I assume you are a judge?

**JUDGE CROWTHER:** Yes, I am the same one you saw last time.

**THE APPELLANT:** I am sorry ...

**JUDGE CROWTHER:** I am not in my formal clothing today.

**THE APPELLANT:** ... but you are not in the same dress. I am terribly sorry.

**JUDGE CROWTHER:** Not at all.

**THE APPELLANT:** Yes, I have actually had the fortune, I am very fortunate to have had glasses prescribed to me, because last time I was with you I could not read, but the Civil Aviation Authority have also helped me on this. And I was in reception and the lady prison officer admitted that while I was having my shoes X-rayed, they were, they were in my hand, because they are brand new I did not want to put them in my pocket, and they disappeared. I said, "Look, come on, I've got some cheap, six copied of ..." because my McKenzie friend brought at least six pairs each time in the previous trial, but could not get them to me because no one would let me have them. I said, "Look, they are in, they are in my cell, just give me a cheap pair so I can at least read." And, well they have done it on purpose, I have no, I have no doubt on that matter.

**JUDGE CROWTHER:** What about today?

**THE APPELLANT:** Today?

**JUDGE CROWTHER:** Yes, are you going to be able to see to read today?

A **THE APPELLANT:** Not without a pair of glasses. But some cheap old times twos will do to read, I think.

**JUDGE CROWTHER:** Has your friend brought a pair? Sir, have you got any glasses for Mr Kirk?

B **MALE SPEAKER:** Unfortunately, no.

**JUDGE CROWTHER:** No. Well are you going to need your glasses or a pair of glasses to participate in this appeal, Mr Kirk?

C **THE APPELLANT:** The aspects of disclosure could be disposed of immediately, because they are actually far more important than the trial, with respect (inaudible), and that is I am trying to establish who made the complaint in this case. Because I have never been allowed to see, I have not ... there was an interview, I think, and I have not been allowed to see the DVD. The incident was filmed and I have not even got the facilities to see that, either. So that, so that is two lots of DVDs that I, I do not have facilities for.

D **JUDGE CROWTHER:** Well the evidence was, was it not, that the incident was not filmed, that there was not CCTV covering it, Mr Smyth.

E **MR SMYTH:** That is correct. The CCTV cameras from within were non-operational.

**JUDGE CROWTHER:** No.

F **THE APPELLANT:** No, but the Magistrate said that he had seen, he has seen the video, and then I put my hand on the prison officer's shoulder ... well, I do not want to say, because it is, that is what the court did. You have heard from the ...

**JUDGE CROWTHER:** Well you certainly cross-examined Mr Rogan on the basis that you had done no more than that ...

G **THE APPELLANT:** Yes.

**JUDGE CROWTHER:** ... and he gave evidence on the basis you had, so there is something we need to resolve there. If the prosecution tell me there is no DVD of the incident, and if there were I would have expected them to have relied upon it as part of their case, but if they tell me

A there is no such piece of evidence, then I am afraid I cannot order them to disclose that which  
does not exist.

**THE APPELLANT:** No, of course, (inaudible), but I am afraid you have ... well, I am very  
B grateful, you have actually clarified something that was worrying me for months, and that is that  
you cannot expect a barrister representing Her Majesty in a court, who then has to rely on a  
string of people as to whether there was video. We know there was video, there was lots of  
video. I would not have arrested him unless I was making sure it was being properly videoed,  
C because of a fear of being accused of assault, which has been the case ever since, 14 years ago  
this year when I arrested someone in public, in front of everybody, and I was, in fact they just  
called it breach of the peace or something, but it was, they would not process the arrest that I did.  
D But I do not digress on that at the moment, all I would like to know is, please, if there is going to  
be a little five minute recession, or whatever you call it, I would be most grateful that I do not  
have bullet proof glass in this light.

**JUDGE CROWTHER:** It is about the last dock left in Cardiff and Newport that does not, Mr  
E Kirk. But there we are, it suits today's purposes.

**THE APPELLANT:** Well it is absolutely fantastic, your Honour, and it is not even my  
birthday. I have had, had the hearing aid fitted since last time, because having flown vintage  
aircraft for many years and without headsets because I will not waste money on a radio. Who  
F wants a radio? People give you commands on a radio. But I have damaged, permanently  
damaged ears. Now getting back to what I am worried about, and I feel that you should take this  
on board, your Honour, and I am sure you have, but I would like to emphasise, who made the  
G complaint to the police? Because they are, they are avoiding this. Each time I have asked, and I  
have even called a number of times before I came before yourself. Now (inaudible) there is an  
outstanding disclosure that the barrister today, or someone, actually took the trouble of going to  
Cardiff Magistrates to try and retrieve the records of the lower court. I understand this is **de**  
H **novi**, but there we are, I think both parties have the right to make the most of what record there

A is, and I will say no more, otherwise I will ramble on until teatime, and that is that you have  
mentioned that you rely on the video. Well there were seven cameras there. They have now  
fitted a camera, I am the closest to a camera fitted last week on my wing. I have been moved so  
B I, I have a cell nearest to it. It is a, it is a risk to national security to bring out some aspects of my  
defence, without legal argument about PII. Why have I now been registered MAPPA Level 3?  
Multi-Agency Public Protection Arrangements. Not Level 1, not Level 2, but in the top five per  
cent. Why? Because the police wish to get the advantage in my civil damages claim that started  
C 22 years ago, and it has been suspended only because I am spending time with your Honour  
today.

**JUDGE CROWTHER:** Well you raise three points there, Mr Kirk. Dealing with them in  
order, the first appears to be, who made the complaint?

**THE APPELLANT:** Yes.

**JUDGE CROWTHER:** Now the evidence we have heard is that you called the police on the  
day and that the police came and spoke to Mr Rogan and asked him if he wanted you to be  
E charged and he said he did.

**THE APPELLANT:** Right.

**JUDGE CROWTHER:** So that deals with the complaint. That was the evidence we heard last  
time.

**THE APPELLANT:** Your Honour, I, I did not hear half of it, but ...

**JUDGE CROWTHER:** Well I understand that.

**THE APPELLANT:** ... that, that sounds logical, yes.

**JUDGE CROWTHER:** Yes. I understand that, which is why I thought it is important that you  
hear what my note of the evidence was. So far as the video is concerned, I understand your  
point, "There are so many cameras, I simply do not believe that there is no CCTV." That is what  
you are telling me. That is a matter that we will have to consider and resolve when we decide the  
H case. But we can go no further than to accept what the prosecution says, that there is none,

A particularly as we have heard evidence not only from Mr Rogan, but from Ms Rowe, that there was no recording CCTV of the scene. You had a tape, though, did you not, an audio tape?

**THE APPELLANT:** Well it is not on that.

**JUDGE CROWTHER:** Right.

B **THE APPELLANT:** I have been refused the facilities in the prison, who caused this hearing today, to process ...

**JUDGE CROWTHER:** Well hold on, let me deal with your third point, if I might.

C **THE APPELLANT:** Sorry, yes.

**JUDGE CROWTHER:** Which was MAPPA.

**THE APPELLANT:** Yes.

D **JUDGE CROWTHER:** Now, you made this submission at the last appeal as well, and I confess that I struggle to see the relevance of your MAPPA listing to this appeal, because I know your case is that this is a malicious prosecution designed to help the South Wales Police in a civil claim, or their defence of a civil claim raised by you, but the fact is, we have to decide this appeal on the facts.

E **THE APPELLANT:** Your Honour, it is far more diverse than that. Her Ladyship The Recorder of Cardiff made it quite clear that when I was released from prison, that it was nothing to do with the Crown Court for withholding my passport, and it is my contention throughout that F the police, that the prison ... I refused to leave the prison on 2<sup>nd</sup> September, and they had to carry me out and dump me on the grass. The police refused to come because my name was attached to the phone call. They never come to help me if they think it is to my advantage. I finished up G (inaudible). The issue is that they withheld the legal papers relating to the civil damages hearing, and since then there is an order, which I have with me somewhere, in November, when then judge had intervened, His Honour Judge Seys Llewellyn QC intervened with the conditions under which I am being ... because I, he would not let me, no one would let me be transferred to H Bristol, outside the control of the complainants, the prison and prison staff, the controller had the

A video screens and directed the prison staff to find out what I was doing at the back of the prison. And therefore, about 15 cameras filmed me there that day, and while there is no public here, how on earth can we accept a prison, Her Majesty's Government running prisons where there is not proper security, at least holding it for 24 hours? I mean, the local paper shop holds his for a month.

**JUDGE CROWTHER:** Well we are back to your second point, but the answer must, I am afraid, be the same, but you will make those submissions at the close of case and we will have to judge them in the light of all the evidence, the evidence we have heard from Ms Rowe and Mr Rogan ...

**THE APPELLANT:** Yes.

**JUDGE CROWTHER:** ... about the existence of cameras, but not recordings, and of course any evidence we hear from you if and when you go into the witness box. We will have to resolve those points.

**THE APPELLANT:** Yes, yes.

**JUDGE CROWTHER:** Now is not the time to do that.

**THE APPELLANT:** No.

**JUDGE CROWTHER:** Your request for disclosure has been made, the prosecution has said, "There is nothing to disclose."

**THE APPELLANT:** Right.

**JUDGE CROWTHER:** So we really must park that on, I am afraid, Mr Kirk.

**THE APPELLANT:** Sorry, sorry.

**JUDGE CROWTHER:** Can I come back to glasses? We have located three pairs of glasses from the lost property. Do you want to try any of them?

**THE APPELLANT:** Yes, they might do. Thank you.

**JUDGE CROWTHER:** Are notes being made in the public gallery? Are notes being made?

**MALE SPEAKER:** Yes.

A **JUDGE CROWTHER:** I think I have said before, notes are not to be made without permission having been asked. Is permission going to be asked?

**MALE SPEAKER:** Can I take some notes, sir?

B **JUDGE CROWTHER:** Yes. Who are you please, sir?

**MALE SPEAKER:** Mr Matthews, Jeffrey Matthews.

**JUDGE CROWTHER:** Your full name? I am sorry, I did not hear.

**MALE SPEAKER:** Jeffrey Matthews.

C **JUDGE CROWTHER:** Yes, and on what basis do you ask permission to take notes, Mr Matthews?

**MALE SPEAKER:** (inaudible) McKenzie advisor. McKenzie advisor. I did ask to speak to him before this court started.

D **JUDGE CROWTHER:** Is it proposed to broadcast the contents of these notes in any way?

**MALE SPEAKER:** Broadcast? How do you mean broadcast?

**JUDGE CROWTHER:** In any sense.

E **MALE SPEAKER:** What, the BBC?

**JUDGE CROWTHER:** Well in any sense. Are you going to promulgate the contents of your notes?

**MALE SPEAKER:** No. No, they are for my and Mr Kirk's use.

F **JUDGE CROWTHER:** Would that assist you, Mr Kirk?

**THE APPELLANT:** They will do for the, for the time being, yes, your Honour.

G **JUDGE CROWTHER:** Thank you very much, Mr Matthews, you may certainly make notes on that basis for the duration of this appeal.

**MALE SPEAKER:** (inaudible)

**JUDGE CROWTHER:** You can sit at that bench in front of you, if you like, if it would make it easier for you.

H **MALE SPEAKER:** No, that is okay, your Honour.

A **THE APPELLANT:** Your Honour, if this is going to proceed longer than I realise ...

**JUDGE CROWTHER:** Did any of those glasses help?

**THE APPELLANT:** These are, these will do me for the moment, your Honour, I am sure.

**JUDGE CROWTHER:** Good.

B **THE APPELLANT:** I am not cross-examining anybody, so I do not need my other glasses.

**JUDGE CROWTHER:** No.

C **THE APPELLANT:** But if there is no video, of course there are the witnesses who notified Mr  
Rogan to come out of the prison and find out what I was doing at the back of the prison. The  
controller in charge of all the video cameras, he is a witness. There are the three prison officers  
who were in the, in the vehicle lock. The one who has to open the door in the first place to let  
D Mr Rogan out, and who closed, if it, it could have been him but it may have been somebody else,  
closed it when, when I was inside, so that I was unlawfully detained, kidnapped. I have given, in  
fact I have served on the outside statements which have, I have said that the Appeal Court should  
cover at the very beginning in order to focus on what is important and what is not, because I am  
E notorious for rambling, as Mr Smyth is well aware. But the case itself is, as I understand it, is  
that I make, I make a private person's arrest because the prison, en masse, have been told,  
because I am MAPP Level 3, I must not go back to France to get my legal papers. They used  
F the excuse of me being registered MAPP Level 3, and there has been a MAPP meeting only  
last week in Barry Police Station, would you believe, and who was there? The prison staff. And  
here I am having to give, defend myself against a very interested party, of which apparently there  
is only one witness, and it is not, it is all wrong. It is quite wrong. It is an abuse. I should not be  
G in jail. I mean, I have served my sentence and I should be out on bail. I should be allowed to  
conduct this case from outside the prison.

**JUDGE CROWTHER:** Well as I said to you during the course of the last hearing, nothing  
relating to this appeal is keeping you in custody.

H

A **THE APPELLANT:** Well, in that case, may I have a tea with my friend for ten minutes outside so that I can smoke a cigar ...

**JUDGE CROWTHER:** Well, I do not ...

B **THE APPELLANT:** ... because I have served my sentence.

**JUDGE CROWTHER:** I do not know, Mr Kirk, why you are in custody or what is keeping you there.

**THE APPELLANT:** Well I would ask you to enquire.

C **JUDGE CROWTHER:** Well I am going to ask Mr Smyth ...

**THE APPELLANT:** (inaudible)

**JUDGE CROWTHER:** ... what the position is. I confess to having been a little surprised to see you arrive from the cells. But please sit down while Mr Smyth helps us.

D **THE APPELLANT:** I, I feel Mr Smyth has been put through rather a lot since he first met me, and now he is being expected to look into something that the police know all about, which is why they keep putting me in prison. It is not Mr Smyth's ... well, with respect, he can make  
E phone calls, but his time is better spent cross-examining me.

**JUDGE CROWTHER:** Mr Smyth, what is the answer?

**MR SMYTH:** Your Honour, my position throughout has been that a court hearing an appeal  
F such as this would not ordinarily be either remanding or granting bail to the appellant. My understanding as to why he remains, why Mr Kirk remains in custody is on account of another case, but I am reluctant to go into too much detail. I cannot recall, I have to confess, how much  
G information ...

**THE APPELLANT:** Please, please do not (inaudible) it on my account. You can forget the bad character nonsense.

**MR SMYTH:** Well, I do not want to start mentioning things that, matters that ordinarily would  
H not be before the court, of course.

A **JUDGE CROWTHER:** Well we all know, because Mr Kirk has told us, that he was to be sentenced by Judge Rowlands and I think has been.

**MR SMYTH:** He has.

B **JUDGE CROWTHER:** None of us know what the sentence was ...

**MR SMYTH:** Right.

**JUDGE CROWTHER:** ... and there is no reason why we should.

**MR SMYTH:** No, no.

C **JUDGE CROWTHER:** Is he still serving that sentence?

**MR SMYTH:** But that is my understanding.

**JUDGE CROWTHER:** Right.

D **MR SMYTH:** There are two outstanding appeals, this and one in Bristol.

**JUDGE CROWTHER:** Well I know about the Bristol one because I have the directions here.

E **MR SMYTH:** Indeed so, yes. And certainly I know that the Bristol case does not cause him to be, the appeal in Bristol does not cause him to be in custody. So the only matter that I am aware of that would remotely cause him to remain in custody is the balance of a sentence to be served.

**JUDGE CROWTHER:** Well there you have it, Mr Kirk.

F **THE APPELLANT:** No. I wish to retract part of what I said about Mr Smyth's position in this matter. He is clearly the one to deal with it, now that I have realised that he has been given erroneous information. Now, my mathematics was not brilliant, I had to sit it again for my commercial pilot's licence. I was arrested on 14<sup>th</sup> October. I was convicted for an 8 month prison sentence for a breach of a restraining order that was never given to me in the first place.

G That is subject to a criminal Court of Appeal in London at the moment. But there was the double one, there was another one about phone calls, an illegal phone call, malicious phone call, whatever it was; another 8 months. As I understand it, they were consecutive, which means 16 months. But if my date is right, I should have been released a fortnight ago, subject to this court granting me bail. And of course, I am very alarmed that this case has been, has been taking so

A long, because Her Ladyship laid down some ground rules back in August about all of this, and  
that is that whatever happens, the case that you know about, my arresting the prosecution  
B barrister, David Gareth Evans, has been delayed and delayed and delayed. It, then it transferred,  
like all my cases which are too embarrassing for them, and I always win them, if they get  
transferred to Bristol, it is only another 20 minute drive and this case could be heard in Bristol  
where I asked it to be heard in the first place.

**JUDGE CROWTHER:** Yes, we are part heard in this case, Mr Kirk. We are not going to  
C move it to Bristol.

**THE APPELLANT:** Yes, but I asked that long before I ever met, I had the privilege of meeting  
your Honour. But what I am getting back to the bail situation is, I do not understand, I mean, I  
D was told I was given 8 months. Now I have been given a prison sentence for what this is about.  
I have never seen a piece of paper of what it is, but the judge, the magistrate judge, I have forgot  
his name, or I never got his name, nobody let me have his name for fear it would go on a  
E website, and he said, "Oh well, you have served it anyway." Well I had been in prison for at  
least six weeks, so I assume it was a three month trial, a three month imprisonment. Well that is,  
would be an application I think I should be putting to you, I (inaudible), as long, as long as  
everything else is (inaudible), you have a situation to resolve and all of this nonsense about me  
F getting access to my witnesses, being able to get Legal Aid, I'm not, I haven't been able to have  
a lawyer. The prison, because they are the complainant, will not let ... three sets of lawyers have  
tried to come and see me. It is all recorded, it is all on record, it is all in letters, emails, that, that  
and the other, as from January, and I would like to lead you, if (inaudible), but of course it is not  
G with me, because I, I did not ... am I allowed to have my papers so we can ...?

**JUDGE CROWTHER:** Yes, of course you are.

**THE APPELLANT:** Of course.

**JUDGE CROWTHER:** Where are they?  
H

A **THE APPELLANT:** At the bottom of the stairs. But no, there is no need to go and get them.  
What I am saying is, I think the order from a number of other judges, since November, I think  
Seys, His Honour Judge Seys Llewellyn the issue, that I should be given reasonable facilities in  
B the prison to conduct a civil case, which has gone on for 20 years, we are part heard and we have  
had 99 witnesses, he would not let me finish. And I, I feel embarrassed that it has been going on  
so long, but he has had to stop this trial, I think it is four times now in the past ten years, ever  
since they painted the machine gun in the machine gun trial, in February, January 2010.

C **JUDGE CROWTHER:** Yes, well my immediate concern is this case.

**THE APPELLANT:** Yes.

**JUDGE CROWTHER:** So far as your remand status is concerned, I only have the power to  
deal with your remand in this case, and I have said ...

D **THE APPELLANT:** (inaudible)

**JUDGE CROWTHER:** ... more than once, so far as I am concerned you are not remanded in  
custody. You are not remanded, in fact.

E **THE APPELLANT:** Thank you. So can I, can I have my cigar on the steps with my friend?

**JUDGE CROWTHER:** No, no. Because if there are other matters outstanding, then the prison  
are rightly keeping you in custody. But if you want to challenge those decisions of the prison,  
the Crown Court and this appeal is not the right time and place to do it.

F **THE APPELLANT:** What am I hearing? Is this a court (inaudible) ...

**JUDGE CROWTHER:** Mr Smyth, do you agree?

**MR SMYTH:** Of course I do, your Honour. Perhaps I can explain, for Mr Kirk's benefit, how I  
G see the situation, because a strict mathematical calculation for the sentence that he has been  
talking about probably would cause his release now, as I understand it, but there was an  
intervening sentence on another matter, this matter in fact, which prevents the prison from being  
able to ...

H **JUDGE CROWTHER:** So that has delayed his release?

A **MR SMYTH:** Yes. But that is as I understand the position.

**JUDGE CROWTHER:** So if we were to hear this appeal and either allow it as to conviction or as to sentence, then that has a meaningful impact upon Mr Kirk's situation, does it not?

B **MR SMYTH:** It does, yes. Yes.

**JUDGE CROWTHER:** Yes. So it is in his interests that this appeal proceed as soon as possible?

**MR SMYTH:** Yes.

C **JUDGE CROWTHER:** Yes. What witnesses do you have left to call?

**MR SMYTH:** Your Honour, I have two police officers. They are PCs Mason and Howell, and they are the two police officers who attended, spoke to Mr Rogan and then arrested Mr Kirk.

**JUDGE CROWTHER:** Yes.

D **MR SMYTH:** After that we have the interviews, and in relation to that it might be as well just to clarify where we are there, because, if I recall correctly, Mr Kirk actually wanted the court to see the DVD of the interview. The second interview is 35 minutes long. There is a preliminary

E interview that I was not proposing to rely upon, dealing with administrative matters; if Mr Kirk wants it in, that is fine. Immediately following the last hearing copies of the two DVDs were sent to him, so he should have them. I have them available. Otherwise, it will be a matter of reading an interview, and that would then conclude the prosecution case.

F **JUDGE CROWTHER:** Yes. Well, Mr Kirk, is there any reason why we cannot get on hearing the next prosecution witnesses?

**THE APPELLANT:** I am sorry, I thought I was giving evidence. I thought that the

G prosecution case had finished. I am terribly sorry.

**JUDGE CROWTHER:** No, not at all.

**THE APPELLANT:** I had not realised the policemen had not been here yet. In which case we can ... it is the disclosure of evidence that I want. The, the delay in witnesses giving evidence is

H not so important. It is the information that this barrister has successfully obtained from the

A Magistrates' records that I need, and I will never get them unless I have an open hearing. I have written copious letters ...

**JUDGE CROWTHER:** Well this is an open hearing.

B **THE APPELLANT:** Yes, exactly, which is why I am trying to make the most of it ...

**JUDGE CROWTHER:** Yes.

**THE APPELLANT:** ... for disclosure.

**JUDGE CROWTHER:** I understand. I had missed your point.

C **THE APPELLANT:** If I do not get disclosure, there is a risk of me losing. If I get disclosure, I usually win my cases. And it is all to do with whether they can withhold public records, and in this particular case it is a video camera, as you emphasised, it is all to do with video. What is the purpose if having seven video cameras if they are not going to keep at least 24 hours, or six  
D hours, or two hours record?

**JUDGE CROWTHER:** Well that is a closing speech again.

**THE APPELLANT:** Well I do not think it is; I think it should be dealt with immediately.

E **JUDGE CROWTHER:** Because if it is a disclosure application, Mr Smyth has a trump card, which is that as far as he knows, following the investigation he has made, there is no video, and what is more, Mr Smyth points to the evidence that was given in the appeal to the effect that there is no video. So I am afraid we cannot hear anymore about the video, until, of course, you  
F give evidence and you can tell us your theory of it.

**THE APPELLANT:** My subpoenas have been issued, have they not?

**JUDGE CROWTHER:** You say that, Mr Kirk. I do not know, is the answer to that.

G **THE APPELLANT:** Well ...

**JUDGE CROWTHER:** What did you apply for? Remind me.

**THE APPELLANT:** Well people who saw the incident.

H **JUDGE CROWTHER:** There has not been any application for a witness summons put before me.

A **THE APPELLANT:** Well guess who controls my post: the complainants, Cardiff Prison. I  
have asked for a witness summons for a governor, Reed; a controller who informed someone to  
go outside and find out what I was doing round the back of the prison; a Mr Reid, another Mr  
B Reid, it spelt differently, who we, we found out was the man who was in charge of the, opening  
the gates and closing the gates, and of course his evidence is that, that Mr, the, the complaint,  
what's his name, Rogan, said that there was a big concrete pillar in front of him, so he could not  
have seen anything. Well it still has not been built yet, because it is still not there; I have just  
C gone past it and there is no pillar. I just digressing to little things here. Then there were the three  
that were laughing, thought it was so funny. So there is one, two, three, four, there must be at  
least four inside the vehicle lock. I have named another one, and I forget his name. And then of  
course there is the ... when I met Her Ladyship, I went to the prison and I spoke to a named  
D prison officer, who told me to, he thought it was all very funny and told me to go, well he used  
the language that is regularly used in prison, and his name was Rogan. And I then went to the  
police station and filed the complaint. I then went to another police station and saw a Mr  
E Watkins, a policeman, he said, "Oh, go down to the, go down to the prison, they, they, they have  
found it." Because they have lost it. They had lost the passport. Nobody was going to let on  
about it. But Mr Watkins has got a witness summons. He has being called, is he not?

F **JUDGE CROWTHER:** Mr Smyth?

**MR SMYTH:** I do not recall the name of 'Watkins' cropping up previously. My understanding  
of the present state of the evidence from the prosecution witnesses, also Mr Rogan, is that when  
the alleged assault took place, nobody else was in the vehicle lock.

G **THE APPELLANT:** No, but the door was open and there was everybody else outside.

**MR SMYTH:** Also, as I recall the present state of the evidence, at that stage the vehicle lock  
door had been shut at the request of Mr Rogan. So as far as the Crown are concerned, we are not  
aware of any other witnesses to the actual incident that could be identified.

H **JUDGE CROWTHER:** No.

A **MR SMYTH:** As to these other issues, in fact Mr Rogan, who as called, was not originally a witness, but was tendered to Mr Kirk for cross-examination. We are not aware of anybody else who can give evidence that would be material to this hearing.

B **JUDGE CROWTHER:** No, thank you very much.

**MR SMYTH:** Other than the two police officers about to be called.

**JUDGE CROWTHER:** Yes. Well shall we call those officers then, Mr Smyth?

**THE APPELLANT:** (inaudible) ...

C **MR SMYTH:** Well I am certainly in a position to do so.

**JUDGE CROWTHER:** Yes.

**THE APPELLANT:** Your Honour, lots of telephone calls were made. Apparently, you have just told me, that I made the complaint, I called the police.

D **JUDGE CROWTHER:** No, I have read through my note of evidence, Mr Kirk. That was the note that I have from the last hearing. That was the evidence that was given.

**THE APPELLANT:** That somebody says that I made the complaint?

E **JUDGE CROWTHER:** That you telephoned the police ...

**THE APPELLANT:** Yes, well ...

**JUDGE CROWTHER:** ... and Mr Rogan, after the police attended, made his complaint.

F **THE APPELLANT:** Mr Rogan?

**JUDGE CROWTHER:** Yes.

**THE APPELLANT:** Ah, right. So I got the police to come to the prison. Well need a copy of proof, because I made more than one phone call, I went to the police station, I tried to file a complaint. Her Ladyship made it quite clear that I was given bail, and remember I joked about the crossing of the Rubicon, and that I was not allowed to cross the Taff to the west of Cardiff, but I could go to France to retrieve my legal papers. But of course, because I am MAPPA Level 3, why am I MAPPA Level 3? I have the right to public interest immunity, legal argument, on behalf of the prosecution, to say why they are withholding the 24-7 surveillance, hours

A surveillance, that they have had on me ever since the machine gun trial. I am entitled, I am (inaudible) ...

**JUDGE CROWTHER:** Mr Kirk, I have heard this submission previously and I have ruled that at this stage I am not minded to order disclosure of the material you seek. It does not seem to me to be relevant to the issue before us.

**THE APPELLANT:** Well ...

**JUDGE CROWTHER:** I am going to ask Mr Smyth to call his next witness.

**MR SMYTH:** That is PC Andrew Mason, please.

**JUDGE CROWTHER:** Thank you very much.

**THE APPELLANT:** Can I have my papers?

**JUDGE CROWTHER:** Yes. Is it right that Mr Kirk has papers here?

**COURT CLERK:** Your Honour, yes.

**JUDGE CROWTHER:** Thank you, that would be helpful.

**THE APPELLANT:** Can I have a pen and paper, please?

**JUDGE CROWTHER:** Yes, you may.

**THE APPELLANT:** Can I speak to my McKenzie friend, please?

**JUDGE CROWTHER:** We will hear the evidence of Mr Mason and then you can discuss with him your approach in cross-examination.

**THE APPELLANT:** No. I asked that he, I see him before this case started today. I asked weeks ago. He has been denied access to the prison, along with my lawyers, and he has tried to see me this morning, and they have switched trial, and this ...

**MALE SPEAKER:** (inaudible)

**THE APPELLANT:** ... and, and so it goes on. It is (inaudible) that this is being dealt with when it so easily could have been dealt with, with me being kept in a separate prison to the witnesses, the complainants, the people (inaudible). It is an abuse.

A **JUDGE CROWTHER:** We are going to hear Mr Mason in chief and then you can have some time to consider, Mr Kirk. Thank you very much.

B **EVIDENCE**

**PC 5378 ANDREW MASON – Sworn**

**Examination-in-Chief by MR SMYTH**

**MR SMYTH:** Please identify yourself, officer, to the court?

C **THE WITNESS:** I am PC 5378 Andrew Mason.

**Q:** Thank you. Is it right that on Saturday, 21<sup>st</sup> September 2013, you were on duty in full uniform, working from Cardiff Central Police Station in company with PC Howell?

**A:** Yes, that is correct.

D **Q:** And at about 13.15, so a quarter past one in the afternoon, did you receive a call via your personal radio?

**A:** Yes, I did.

E **Q:** And what was that call to do?

**A:** The call was to attend at Cardiff Prison, where they had received a call from a Maurice Kirk to say that they had stolen his passport, and if police didn't attend, he was, or there would be a breach of the peace and he would kick up a fuss.

F **JUDGE CROWTHER:** Now let us have a careful note of that. Maurice Kirk was saying, tell us again?

**A:** Maurice Kirk said that the prison has stolen his passport and wouldn't give it back ...

G **JUDGE CROWTHER:** Yes.

**A:** ... and if police didn't attend there would be a breach of the peace and he would kick up a fuss.

H **JUDGE CROWTHER:** Thank you.

A **MR SMYTH:** And your understanding was that it was Mr Kirk himself who had made a call to the police?

**A:** Yes, that is correct, yes.

B **Q:** What time did you ... sorry, am I going too fast? At what time did you arrive at the prison?

**A:** I can't recall the exact time now. I believe it is on my statement.

**Q:** Well it is. Do you have a copy of your statement with you there?

**A:** No.

C **Q:** You have left it outside?

**A:** It is outside, sorry.

**JUDGE CROWTHER:** You can lead times.

D **MR SMYTH:** At about a quarter to two, 13.45, you arrived at the prison?

**A:** Yes.

**Q:** And what did you find when you arrived?

E **A:** On first arrival I went to the main reception. I said, or asked, "Have you called us?" and they said, "Maurice Kirk has called." I believe the prison had also called us at that stage, I believe. They informed me that Mr Kirk was in the vehicle dock and directed me to where the vehicle dock was.

F **Q:** Did you make your way to that location?

**A:** Yeah, we made our way to the vehicle dock, we were buzzed in by the security inside.

**Q:** Can I ask, was the door vehicle lock open or shut?

**A:** It was closed on our arrival.

G **Q:** How were you able to secure entry?

**A:** We had to press the buzzer outside. I believe an officer from inside then presses the button to open the van dock to let us in.

H **Q:** Having entered, what did you see?

A A: Immediately as I walked in, I saw a prison officer directly in front of me and I could see Mr Kirk right down at the far end. The prison officer approached us immediately and informed us that ...

B Q: Can I stop you minute?

A: Yes.

Q: You have mentioned a prison officer. Were you able to ascertain who that was?

A: It was David Rogan.

C Q: Where was he standing when you entered?

A: As soon as the van dock lifted up, he was roughly five yards in front of me, to the left.

Q: And where was Mr Kirk?

D A: Mr Kirk was about 20 yards away, right down the other end of the van dock as far as he could go.

Q: Did you see anybody else within the vehicle lock?

E A: There may have been a person behind the glass to my left. I think they, they had a person in charge of opening the van dock.

Q: But was there anybody actually in the lock itself other than those two?

A: No.

F Q: What was Mr Kirk doing so far as you could tell?

A: At the time when I walked in, he was on a mobile phone.

Q: Did you hear what he was saying?

A: No, I didn't.

G Q: What did Mr Rogan say to you?

A: Mr Rogan told me that Mr Kirk had taken hold of his shoulder and wrist to citizen arrest him for stealing his passport, and in doing so he had caused an injury to his wrist.

H Q: Did you see any evidence of injury to his wrist?

A: Yeah, he had some slight bruising and a scratch to his, I believe it was his left wrist.

A **Q:** In fact, did you take a photograph of that injury?

**A:** Yes, I did.

**MR SMYTH:** And, in fact, I think that is already our exhibit 1. Do we have that available, of the usual exhibit?

B **JUDGE CROWTHER:** Is that it? **(Handed)**

**MR SMYTH:** Thank you very much, yes.

**THE WITNESS:** Yes, that is the photo.

C **JUDGE CROWTHER:** Thank you.

**MR SMYTH:** As a result of what you had been told, what did you do?

**THE WITNESS:** As a result of what I had been informed by Mr Rogan, I approached Mr Kirk and I informed him that based on what I had heard I was arresting him on suspicion of common assault.

**Q:** And that was at 13.55 hours?

**A:** Yeah, that is correct.

E **Q:** And what happened next?

**A:** I stayed with Mr Kirk at the end of the vehicle dock. We called for a van to come and assist us, to convey Mr Kirk to our custody, and I believe it was approximately half an hour later that the van arrived, at which point we opened the van dock and Mr Kirk was led outside to the van.

F **Q:** Did you have any further dealings with Mr Kirk?

**A:** No, I didn't.

**Q:** And when did you make your notes about this incident?

G **A:** As soon as I could when I went back to Cardiff Central Police Station.

**Q:** And in what form did you make those notes?

**A:** They were made on the computer. Is that what you mean, or ...?

H **MR SMYTH:** Yes, well in what form, or documentary form did you produce your ...

A **JUDGE CROWTHER:** Well you can type them directly onto a system called NICHE these days, do you not?

**THE WITNESS:** Yeah.

B **JUDGE CROWTHER:** Yes.

**A:** Yeah.

**MR SMYTH:** And that then became your statement?

**A:** Yes.

C **MR SMYTH:** Thank you. Would you wait there?

**THE WITNESS:** Yes.

**MR SMYTH:** I have no further questions, thank you.

D **JUDGE CROWTHER:** Yes. Mr Kirk, are you in a position to cross-examine this officer or do you want time?

**Cross-examination by THE APPELLANT**

E **THE APPELLANT:** Can we establish the name of the police officer who came and took me away?

**JUDGE CROWTHER:** Was that you?

**THE WITNESS:** In the van, you mean?

**THE APPELLANT:** No, the driver.

F **THE WITNESS:** The driver of the van?

**Q:** Yes.

**A:** That was PC David Watts, 5311.

G **Q:** Which one, 5311?

**A:** 5311.

**Q:** Have you got Jeff? Sorry, he is the one, I was calling him Watkins. I thought I had that wrong. Would he require a subpoena, a witness summons to come here today?

H **A:** He didn't receive one, no.

A **Q:** He did not? How do you know that?

**A:** Because he would be here if he did.

**Q:** I beg your pardon?

**A:** If he received the summons to attend ...

B **JUDGE CROWTHER:** All this officer can say, Mr Kirk ...

**THE APPELLANT:** No, no, you said he had not, did you not?

**JUDGE CROWTHER:** Mr Kirk, pause, please. All this officer can say is whether that officer  
C is outside or not, and he is not. Is that your answer?

**THE WITNESS:** Yes, that is correct.

**JUDGE CROWTHER:** Yes, very well.

**THE APPELLANT:** So I am not allowed to cross-examine, then? This is a waste of time, an  
D absolute waste of time. This is an absolute waste of time. (inaudible) ...

**JUDGE CROWTHER:** Do you have anymore questions, Mr Kirk?

**THE APPELLANT:** ... nonsense, an absolute waste ... it's a nonsense, your Honour. No pen  
E and paper, nothing.

**JUDGE CROWTHER:** Yes, well we will let Mr Kirk have a few moments and we will see if  
he is going to participate in cross-examining the witness any further. We will come back in at a  
quarter past 11.

**MR SMYTH:** Would your Honour permit me, I know this officer is in mid-evidence, but  
F would your Honour permit me to ask me about Mr Watts' availability of him, in case that  
becomes an issue?

**JUDGE CROWTHER:** You can make those enquiries in another way. Let us observe the  
G proprieties absolutely in this case.

**MR SMYTH:** Yes, I agree.

**JUDGE CROWTHER:** Please do not talk to anybody about the evidence you are giving in this  
H case during the break. We will come back in at a quarter past 11. Thank you.

A **COURT CLERK:** Court rise.

(A short break)

**COURT CLERK:** Court rise.

B **JUDGE CROWTHER:** Yes, Mr Kirk, do you want to ask anymore questions in cross-examination?

**THE APPELLANT:** Thank you for your pen and paper, your Honour. Fortunately I was able to (inaudible) a member of the public, in this short interval (inaudible) make a request. I have written to you direct about this case. Have you received the letter?

C **JUDGE CROWTHER:** No.

**THE APPELLANT:** Your Honour, I am in custody in Cardiff Prison. This is about an assault, alleged assault on a Cardiff prison officer. I have here the directions from His Honour Judge Seys Llewellyn, I have got two copies, which I forgot to serve on the court this morning in the break, but I meant to do it, but of course (inaudible) ...

**JUDGE CROWTHER:** Pause, please. I dealt with one application by a member of the public to take notes. I see another member of the public is taking notes.

E **THE APPELLANT:** Yes.

**JUDGE CROWTHER:** Why is that?

**THE APPELLANT:** Because, because last week ...

F **JUDGE CROWTHER:** Why has permission not been asked? It is your, sir, I am addressing, the gentleman holding his glasses.

**MALE SPEAKER:** Me, my Lord?

G **JUDGE CROWTHER:** Yes. Are you taking notes?

**MALE SPEAKER:** I am about to, yes. (inaudible) Yes, I was, I was proposing to.

**JUDGE CROWTHER:** For what purpose?

H **MALE SPEAKER:** Well because I am a member of the public and, as far as I am aware, there is no legal restraints on taking notes.

A **JUDGE CROWTHER:** This is a case in which there is an appeal in another court centre. I am  
concerned that promulgation of information regarding this case may have an adverse effect upon  
the course of justice in that matter. I have allowed somebody acting as Mr Kirk's McKenzie  
B friend to take notes. I am not prepared to allow anybody else to take notes in this case. You will  
not take notes, sir. Thank you very much.

**MALE SPEAKER:** Well I will be sending a further letter (inaudible) about that.

**JUDGE CROWTHER:** Yes, Mr Kirk.

C **THE APPELLANT:** Your Honour, I have been put, put on the back foot here. I know  
(inaudible) expression on the spur of the moment. I have had a lot of problems with the prison,  
defending myself in criminal trials, since the 14<sup>th</sup> October when I was arrested, and I have been  
D detained ever since. In the end it is the orders from, or directions from His Honour Judge Seys  
Llewellyn dated November, whereby I should have reasonable access to my computer and to my  
legal papers and so on, to progress a trial of a different sort in a different place. Totally ignored  
by the authorities, especially because on one the most important days of the year, 10<sup>th</sup> December,  
E I was convicted for the offence which is now before your Worships and your Honour. And  
eventually ...

**JUDGE CROWTHER:** Before you go any further, Mr Kirk, might the officer sit down. You  
are not about to ask him a question?

F **THE APPELLANT:** I would be quite happy for him to leave, actually.

**JUDGE CROWTHER:** Do you have any questions for him?

**THE APPELLANT:** Oh, plenty.

G **JUDGE CROWTHER:** Well you can sit down while we hear this application. Is there any  
reason why he should not hear what you are about tell me, Mr Kirk?

**THE APPELLANT:** No, I do not think it is, I do not think it is anything to do with this  
gentleman.

H **JUDGE CROWTHER:** No.

A **THE APPELLANT:** No.

**JUDGE CROWTHER:** Well you can sit down. Thank you very much.

B **THE APPELLANT:** I have made detailed applications to this court, the criminal Court of  
Appeal, to Bristol Crown Court, the County Court, the Magistrates' Court in Cardiff, and these  
were eventually transferred from my scrawl that nobody can read, not even me, only my first  
wife seems to be able to read it, never mind, and I was allowed access to a computer, which is a  
story in itself, and I have typed clear documents for the court that should have gone out before  
C Christmas, and three of them here are directly involved with this, this hearing, and one is  
addressed directly to you. And in order to be quite sure, because I am somewhat experienced in  
this, it is a sign of misspent youth, someone would say, or might say, my father might say, I not  
D only asked the prison to email it to you, which they did on a previous occasion, it is not to you  
specifically but to the Cardiff Crown Court. I then wrote letters to make sure that this was not  
going to happen, one to the overall manager, Luigi Strinati, all in the month of June, relating to  
this period. I wrote, I copied, and I made sure that the courts I mentioned had copies of  
E everything that I did. So I actually asked for that, and because I did not trust them, bearing in  
mind I am MAPPA Level 3, I had, I managed to get them printed, again by the further interfere  
... what do you call it? Involvement with His Honour Seys Llewellyn, and they eventually  
F buckled under and allowed me to have access to printing anything I write, because I am not  
allowed to photocopy, I am not allowed the facilities, I am not allowed a carbon copy and very  
rarely am I allowed to photocopy anything, and so I was allowed to print something. And I sent  
out last Thursday, whatever date that was, not only on the understanding that they were going to  
G be emailed to you direct because this case was due on the Monday, but they were to be emailed  
to the criminal court of law, the Criminal Cases Review Commission, the Bristol Crown Court,  
Cardiff Magistrates' and the Cardiff Crown Court, and of course the most important one, the  
County Court. But I did not trust them, like one does, so I posted them first class and they  
H guaranteed that those documents would go to the recipients. One of them is here in court, who

A should have received a copy of what I sent to you, because not only did I send them to the Crown  
Court, but I sent copies to the McKenzie, the designated McKenzie friend, who is sitting in the  
front row, who is in Bristol. This is one of the reasons why he is helping me, because he is the  
B nearest helper in the country; most of them are abroad. And the other gentleman that has come  
has not seen them either, and he has been asked, well I do not wish to say about his involvement,  
because I want him to tell you himself, (inaudible) my own potential witness on the issue of the  
appalling conditions I am being kept in, in Cardiff Prison, knowing, everybody knowing  
C (inaudible) on the line, that I am never going to get a fair trial because I have not been able to  
prepare for this case. No one, I am yet to find, has received those letters, and they were copied to  
Bristol CPS, I do not know if I sent them to the CPS, I may not have sent them to the CPS, but I  
D have got lots of copies here, but I am going to need five minutes to find them, because I was not  
ready for this. I did not expect ...

**JUDGE CROWTHER:** But you expected to cross-examine this police officer, surely?

**THE APPELLANT:** No, but what it means is that those letters of mine never left the prison,  
E and it means my emails never left the prison. I have now found three people who did not get  
those first class post on the Thursday before now.

**JUDGE CROWTHER:** You have not told me what the contents of the letter was.

**THE APPELLANT:** I want to give them to you.

**JUDGE CROWTHER:** Does it affect your cross-examination of this witness?

**THE APPELLANT:** Yes, because one is an abuse of process application, one is an application  
for bail, I expect, and I do not think, I had not thought about it then, I had not sort of worked it  
G out and thought, "Oh, hang on (inaudible) ..."

**JUDGE CROWTHER:** But, well you know I cannot grant you bail because you are serving  
the sentence imposed by another judge.

**THE APPELLANT:** No, I have finished.

**JUDGE CROWTHER:** The information I have is that you have not.

A **THE APPELLANT:** Yes, well who from? Somebody who has played a trump card, this so-called trump card, who said, "Oh, if I am told that there is no video, therefore there is no video." And, I mean, which world are we living in here? I mean, what is the point of this case carrying on? Though I am not bloody walking out yet, until I make you ...

B **JUDGE CROWTHER:** Mr Kirk, I am going to ask you now to continue to cross-examine the officer. Would you stand up please, sir?

C **THE APPELLANT:** (pause) I wish to give you copies of the directions from another judge, and there are three copies. Oh, in fact there is, could you give one to my McKenzie friend, please. There should be three. There should be six pages there (inaudible). **(Handed)**

**JUDGE CROWTHER:** Thank you.

D **THE APPELLANT:** I have only got one of those at the moment, because I have not, because I did not know, I was not ready for this. And there is one addressed to you, which I had to look for. **(Handed)**

**JUDGE CROWTHER:** Thank you very much.

E **MR SMYTH:** Rather than this witness reading this document, I do not know whether it relates to him, might have that copy to read instead?

**JUDGE CROWTHER:** Yes. I would not have thought it is for you.

**MR SMYTH:** Thank you.

F **JUDGE CROWTHER:** Thank you.

**THE APPELLANT:** (inaudible conversation aside) (pause)

**JUDGE CROWTHER:** Yes, Mr Kirk, do you have any questions for the officer?

G **THE APPELLANT:** No, I want to give you the letter that I wrote from the prison and the complainant promised that you would have it before the trial started.

H **JUDGE CROWTHER:** I am going to ask now, Mr Kirk, you cross-examine the officer. I will consider the contents of the letter at a later stage.

A **THE APPELLANT:** Yes, but at what later stage? Immediately after this witness, before the next witness? In which case, I will withdraw my application.

**JUDGE CROWTHER:** Yes, that is when I will consider it.

B **THE APPELLANT:** That would (inaudible), thank you very much. Who was in charge?

**THE WITNESS:** What do you mean, who was in charge?

**Q:** Who was in charge?

**A:** In charge of what?

C **Q:** Well, what were you told which caused you to get in your car and come to the prison?

**A:** I was passed the call by my control room, from the call from yourself.

**Q:** And that would be written in your notebook?

**A:** No.

D **Q:** Why not?

**A:** Because my original notes was my statement, which I made when I went back to the police station.

E **Q:** Do you mean you do not write things in your notebook?

**A:** Not everything, no.

**Q:** Not when you are going to arrest someone?

**A:** Not always, no.

F **Q:** Is there any record in your notebook of this incident?

**A:** No.

**Q:** Could I see your notebook?

G **A:** I don't have my notebook.

**THE APPELLANT:** Yes, but I asked for it to be here today. Well you know the answer and you know the answer about the subpoenas, you have (inaudible) given that away, so what about my applications to the prison and the police, independently, that they produce your notebook?

H **JUDGE CROWTHER:** Do you know anything about that?

A **THE WITNESS:** No.

**JUDGE CROWTHER:** Were you asked to bring your notebook today?

A: No.

B **THE APPELLANT:** So how long did it take, roughly, from the time (inaudible) to you getting to the police station, the prison?

A: Sorry, can you say again?

C **Q:** What sort of period from when you were asked to go to the prison did it take you to get there?

A: I don't know. As soon as I was passed the call, I come down, so ...

D **Q:** Sorry?

A: I don't know an exact time. As soon as I was passed the call on my radio, I was at Cardiff Central Police Station, and I then made my way to the prison.

**JUDGE CROWTHER:** Where were you when you got the call?

A: At Cardiff Central Police Station.

E **JUDGE CROWTHER:** You were at Central?

A: Yeah.

**THE APPELLANT:** Well you are a police officer, (inaudible) roughly sort of time period did it take?

F **A:** I would imagine ten to 15 minutes.

**Q:** Right, right. Did they tell you had made the phone call?

A: Yes, they told me it was yourself that had rung in.

G **Q:** Right. Have you seen a record of that call?

A: Yes, I have seen the text of the call.

**Q:** You have seen what?

A: The text of the call, yes.

H **THE APPELLANT:** No, no, I am talking about from your MGC ... MGC, is it?

A **JUDGE CROWTHER:** Schedule of unused material? MG6C, is that what you are thinking of?

**THE APPELLANT:** Yes, yes.

B **JUDGE CROWTHER:** Yes.

**THE APPELLANT:** Police information is like getting, well there are some crude expressions I have learnt in prison, very rarely released to an accused. That is to say the full record of the incident. You keep record of the time I made a ... you have the facilities to have it tape recorded?

C **THE WITNESS:** It can be, yes.

**Q:** Well it would have been, would it not?

D **A:** It can be asked for the call to be downloaded, yes.

**Q:** Yes. Yes, so that means you recorded it and whether you stored it or not, I was MAPPA Level 3, was I not?

**A:** I don't know.

E **Q:** You do not know?

**A:** No.

**Q:** Oh. Do you know now?

**A:** No.

F **Q:** Worrying, is it not, that you are going out with the possibility of arresting a MAPPA Level 3, top five per cent terrorist level member of the general public at large, and you did not know, they did not warn you that I often carry a machine gun under my arm?

G **A:** No.

**Q:** They never warned you?

**A:** No.

H **Q:** Right. So you came to the station, you came to the prison in your car, a panda car was it?

**A:** Yes.

A Q: Right, and you went in the front door?  
A: I went to main reception first.  
Q: Yes, and who did you speak to?  
A: I don't know, a member of staff behind the glass in the main reception.

B Q: Yes, and that was all covered by (inaudible)?  
A: I don't know.  
Q: Well it would be, would it not?

C A: I don't know. I don't work at the prison, I don't know what CCTV is there.  
Q: But when you left, what did you know about the CCTV?  
A: I asked if there was CCTV which would cover the incident and they told me that the van dock's CCTV wasn't working.

D Q: The what?  
A: The CCTV inside the van dock wasn't working.  
Q: Which one? All of them?

E A: That is what they told me.  
Q: Who told you?  
A: The governor who came down.  
Q: Yes, and his name is?

F A: I don't know his name.  
Q: Well, I have asked him to attend without a witness summons. His name is Aggett. Describe him?

G A: I can't recall what he looked like.  
Q: Well (inaudible) came down, no, there was more than one non-uniformed officer there, was there not?  
A: I don't know.

H

A **Q:** Yes, there was a female there, was there not? Sarah Rowe, in charge of security of the prison, the security officer of the prison? You spoke to her, did you not?

**A:** No.

B **Q:** Did they not tell you that they had lost the passport?

**A:** My colleague was speaking with the staff, I was with yourself at, at the other end of the van dock.

C **Q:** I will ask you again. Did they not tell you that I am not getting it each time I go down there because they have lost it?

**A:** I don't know.

**Q:** You did not know before I asked?

**A:** No.

D **JUDGE CROWTHER:** Well it is a simple question, actually, did anyone in the prison tell you they had lost Mr Kirk's passport?

**A:** No.

E **JUDGE CROWTHER:** No.

**THE APPELLANT:** Mr Smyth knows that I am very good at making simple questions. So who opened the door to let you in, sorry, the vehicle lock?

F **THE WITNESS:** I don't know. I assume it was opened from inside after the buzzer was pressed.

**Q:** Who asked them to?

**A:** Who asked them to open the dock?

G **Q:** Yes.

**A:** As far as I am aware, it was myself pressing the buzzer.

**Q:** What do you mean 'as far as you are aware'?

H **A:** I, I can't recall if it was myself or my colleague who pressed the buzzer.

A **Q:** I put it to you that the person in charge, who asked all the questions, pressed the button. Is that not the true story?

**A:** I don't know who you mean. There was only myself and PC Howell there.

B **Q:** Right, so was she in charge?

**A:** We are of the same rank, neither of us are in charge.

**THE APPELLANT:** So when you conduct yourself ...

C **JUDGE CROWTHER:** Sorry, Mr Kirk, so I understand, are you saying it is your case there was a third man?

**THE APPELLANT:** That is the driver coming back, coming to pick me up after the arrest, your Honour.

D **JUDGE CROWTHER:** But there was not a third man directing these two, so far as ...

**THE APPELLANT:** No, there was no other policeman outside the (inaudible).

**JUDGE CROWTHER:** Thank you. All right, thank you very much.

**THE APPELLANT:** No, no, I am sorry. Thank you.

E **JUDGE CROWTHER:** No. No, that is ...

**THE APPELLANT:** (inaudible) interrupt me as much as you like, your Honour, I will never make an objection.

F **MALE SPEAKER:** That's a first.

**THE APPELLANT:** So you are not prepared to say who was in charge?

**THE WITNESS:** No, neither of us were in charge. We are both equal rank and we deal with things together.

G **Q:** Right. And I was on a mobile phone?

**A:** When we come into the van dock, yes.

**Q:** Well can you tell the court who (inaudible) had been complaining to on the phone?

H **A:** I don't know who you were speaking to at that point.

A **Q:** Yes, you do. I had been locked up, had I not? They had closed the door on me and it was false imprisonment, was it not? It was, whatever you want, well I was detained unlawfully, was I not? I had asked to leave and they would not open the door. You heard about that, did you not?

B **A:** No.

**Q:** You have not even heard about it, even though that is what I talked about when I was arrested?

C **A:** No. I didn't interview you, I only arrested you, and that was my only involvement.

**Q:** I was arrested for entering a prison without permission?

**A:** No.

D **Q:** I was arrested by a female police officer?

**A:** No.

**THE APPELLANT:** Yes, I was.

**JUDGE CROWTHER:** Well, Mr Kirk, you can only ask questions ...

E **THE APPELLANT:** I put it to you.

**JUDGE CROWTHER:** ... it is not the time for argument.

**THE APPELLANT:** I put it to you that I was.

F **THE WITNESS:** It was myself that arrested you.

**Q:** When that carried on, how many were in the vehicle?

**A:** When what carried on?

**Q:** When you say you arrested me?

G **A:** I don't know how many people were in there.

**Q:** You do not know?

**A:** No.

H **THE APPELLANT:** Who has briefed you on this, on how to change your evidence from the previous hearing?

A **JUDGE CROWTHER:** Well that is a question that is sometimes characterised by the phrase, “When did you stop beating your wife.” It is a question that cannot be answered giving an innocent explanation. So perhaps the question first is, has anyone briefed you on giving evidence today?

B **THE WITNESS:** No.

**JUDGE CROWTHER:** No.

**THE APPELLANT:** Was there anybody else there when you say you arrested me?

C **THE WITNESS:** I don’t know. When I had walked in with myself and my colleague, we were approached by Mr Rogan and told what happened. I then walked to yourself at the other end of the van dock.

D **Q:** When you walked in, how many were in the vehicle?

**A:** I can’t recall.

**Q:** Was there more than one person?

E **A:** As far as I’m aware, there was Mr Rogan and there was possibly someone sitting behind the screen to my left. I was listening to Mr Rogan.

**Q:** So you believe there was somebody behind the screen. Why was that person behind a screen?

**A:** I don’t know.

F **Q:** How do you know he was there, if it was a screen? Do you mean it was a one-way mirror, or a ...?

**A:** No, a clear screen like in front of you now.

G **Q:** Ah, so it was a window, what you would call a window, not (inaudible) a clear window?

**A:** Yes.

**Q:** Right. So you could see somebody looking through a window, right.

H **A:** I, I couldn’t tell you 100 per cent. I was aware that there may have been someone sitting there while I was focused on Mr Rogan.

A Q: So when you asked who saw this, who did you ask?  
A: I just asked Mr Rogan. He was the only person that gave us a statement.  
Q: You asked Mr Rogan?  
A: Yes.

B Q: Do you know how Mr Rogan caught, how Mr Rogan found me in the car park at the back, which is referred to in one of his statements somewhere?  
A: No. All I know is Mr Rogan told me that you were out in the van dock and he came in behind you.

C Q: No, no. Somebody, in somebody's statement, they admitted that I had gone round the back of the prison to the private area for prison officer parking. Are you aware of that? I mean, you may not be.  
A: I think I am aware from taking a statement from Mr Rogan, yes. He said you were looking at staff vehicles round the back.

D Q: Yes, yes. Did you establish whether only he dealt with the matter?  
A: No.

E Q: Why not?  
A: Because I, I could only deal with the incident I was presented with in front of me.

F Q: Did you not consider the voracity, the honesty of the man from the very start?  
A: No.  
Q: That certain things have to be cross-checked while the subject was live in your hands?  
A: No, I could only deal with an assault that was reported to me, which I dealt with as I felt was right.

G Q: Right, so the next officer could answer that question?  
A: I don't know.

H Q: You do not know?  
A: I can't speak for my colleague.

A Q: Yes, but you know what has been discussed in the canteen, you know what was given in evidence in the lower court. Can you not say a bit more than that?

A: No.

B Q: Right. So here we have it, I heard somebody say it in court, so somebody said it, that I was found at the back of the prison in a private area of the car park, right, and Mr Rogan was the only officer that was involved throughout these proceedings. Is that not right?

A: I don't know.

C Q: Well the court needs to know. It does not matter what I say, I am just a humble guy from the wrong side of the bridge. It does not matter what I say, or my 65 witnesses I intend calling, I would like to call. I need to establish whether you took the word of Mr Rogan only, that he was the only witness to me being around the back of the prison in the car park?

D A: Yes, because it was irrelevant to what I was actually dealing with.

Q: Right. Did that bit of information give you the indication that there might be somebody else who might have been watching it all?

E A: No. I, I only asked Mr Rogan what happened.

Q: Right, right. So you then come in through the door. Who pressed the button?

A: As far as I am aware, I did.

F Q: No, you did not. There is a statement that has been given to this court in advance, and I hope in it, it contains evidence of an eyewitness who was passing on his bike and he saw her press the bottom, but you cannot, you say no, the eyewitness has got it wrong?

A: As far as I am aware, from my statement, I pressed the button.

G Q: Right. But that will be caught on video, would it not, who pressed the button?

A: I don't know.

Q: Well you have got seven videos on that, on that video, vehicle lock, are you aware of that?

H A: No. I asked the staff there and the governor about the CCTV and they told me that they wasn't covering the van dock entrance.

A Q: Right. Just one governor, so I might have the wrong name, but one governor?  
A: The governor and Mr Rogan, I asked.  
Q: Yes. Who else?  
B A: I don't know. When I was (inaudible) the van dock at the end, when I was taking a statement.  
Q: Have you got a name of anybody?  
A: I don't have another name.  
C Q: Do you understand the cameras that were filming there, there was the private company next door, the big skyscraper with cameras that shines on the front door, but you know that, do you not?  
A: No.  
D Q: Did it not cross your mind that you should be looking, what we call gathering evidence before it is damaged, before it goes walkabout?  
A: No. As far as I was aware, the only cameras were the prison's cameras.  
E Q: Right, so you took the word of who for that?  
A: Whoever I spoke with, the prison, the governor that came down and Mr Rogan.  
Q: Ah, so the governor told you? Ah, that is progress, we did not get that last time round. So you are saying the governor has officially told you or unofficially?  
F A: I asked if there was CCTV in the van dock or covering the outside. I was told the van dock CCTV did not work, and I was told the cameras outside didn't cover the front of the van lock.  
Q: But they are there, they are still there, I saw them on my way here this morning. How on  
G earth do you think then they run a Category C or D, or whatever it is, without cameras with storage of at least 24 hours, minimum? And you say now this is, this is not, this bit is new, so you are saying that the governor told you there was no ...? Are you sure about that? Because that is new evidence.  
H A: The governor was certainly there when we asked about the CCTV.

A **JUDGE CROWTHER:** It is not new evidence, Mr Kirk, is it, it is what everybody has so far.

**THE APPELLANT:** There was only one ...

**JUDGE CROWTHER:** That is right, Mr Smyth, is it not?

**THE APPELLANT:** Yes.

B **JUDGE CROWTHER:** Yes.

**THE APPELLANT:** There is only one truth, your Honour.

**JUDGE CROWTHER:** Yes, that is right.

C **THE APPELLANT:** Thank you.

**JUDGE CROWTHER:** The evidence is entirely as this officer has suggested. It is not helpful to preface a question by saying, "That is new," as if there has been a forensic trial. Simply asking the questions plainly is enough.

D **THE APPELLANT:** Did you tell the previous court that the governor told you that, he told you that there was no coverage, in the manner which you have just described, available?

**THE WITNESS:** I don't know. I don't know if I was asked that at the previous court.

E **Q:** Sorry?

**A:** I don't know if I was asked that at the previous court.

**Q:** Oh, oh, right. So the governor has confirmed that there is no, there were no cameras covering the front of the prison, there were no cameras covering the vehicle lock ... hang on, what about the reception where the general public come in and there is a big camera there as people who are frisked and talk through the glass, which you spoke through and I used to go to, to get, try and get my passport and my legal papers back, that was all on video, was it not?

F

G **A:** I don't know.

**Q:** You did not make any enquiries to establish that?

**A:** No.

**Q:** Would anybody else have done it on your behalf?

H **A:** Not that I am aware of.

A Q: Did you go to court last time with this situation on your mind?  
A: What situation do you mean?  
Q: The fact that we are all relying on Mr Rogan's evidence, before we even get to the incident  
B of my lawful arrest. Are you sure you cannot introduce some names of anybody else who can  
support what you have been saying?  
A: No.  
Q: And you have no written record of it, either?  
C A: No.  
Q: No. Do you have videos around the police station?  
A: Sorry?  
D Q: Do you have videos around the police station?  
A: What do you mean 'videos'?  
Q: Well front door, reception, cells?  
A: CCTV, you mean?  
E Q: Yes, sorry, what did I call it?  
A: Videos, you said.  
Q: Oh, all right, well sorry, I do not know, at my age, my age, I am showing my age, I am in my  
F seventieth year. What do you call it? I call it (inaudible) tape or something. Do you not rely on  
CCTV in court cases to sort out the nonsense and shorten these trials?  
A: If the incident is captured on CCTV, then yes.  
Q: Yes. Is everything captured around the police station, outside, inside, and so on?  
G A: I don't know. I don't believe we have CCTV at the police station.  
Q: Sorry, what?  
A: I don't think we have CCTV at the police station.  
H Q: Well what is your alternative expression for it? I mean, Barry Police Station, I saw them  
screwing, screwing the camera up outside on the reception there when I was visiting a very

A squashed dog one day 15 years ago, and they were putting up a camera to watch people who come and go, a bit like a pub or, or down at the cash and carry. Are you saying ... I have lost this, I have lost the plot here. Are you saying that you do not have the knowledge whether your local police station that you came from relied (inaudible) on their surveillance of their own cameras to police their own building?

A: I don't know what cameras are on the police station. That's not my job to know where the cameras are.

C Q: And you did the arrest?

A: Yeah.

Q: And I said, "He was a party to withholding my passport," or words to that effect? What, what did I say when you arrested me?

D A: You didn't make the reply to caution.

Q: I did not make a reply?

A: No.

E Q: Are you sure about that?

A: Yes.

Q: How unusual. Right, so I did not, I did not say that?

A: (no audible response)

F Q: Right, so did you get to hear what I had gone to the prison for, from Mr Rogan?

A: No, only the, (inaudible) the statement I took from Mr Rogan.

G Q: I have not seen that for ages. Did it mention that I was complaining about the missing passport?

A: I don't know. He said that, he said you tried to citizen arrest him because he had stolen your passport.

H Q: Ah, right, I see. So he gave you a reason for me being there?

A: (no audible response)

A Q: Yes, right. Did you make any enquires upon Maurice Kirk making his six hundred and forty second complaint to the police in the 22 years that he has worked (inaudible) in South Wales? Did you ask him, did you make enquiries about my complaint?

B A: No.

Q: Why not?

A: Because that's why, I wasn't there to deal with that.

Q: So who would have done that?

C A: I don't know.

Q: You mean you did not report the fact that I had been there three times, four times did you say?

D A: I don't know.

Q: Well did you become aware that I refused to leave the prison on 2<sup>nd</sup> September and six officers, rather angry, had to carry me almost (inaudible) because I was on the wrong end of the prison, through about 30 something doors and dumped me on the grass outside? Did you not hear about that at some stage?

E A: No.

Q: You have never heard about that?

F A: No.

Q: And I refused to leave the prison because they were withholding a box of legal papers (inaudible) and then asked that I get, and had been withheld, on, what is it, 17, well it is a matter of prison, police record that I have been arrested 17 times without a conviction, and that that black box, or was it a green box, I forget, they were not given to me. You know nothing about that?

G A: No.

H

A Q: Even though I had written to the police station before, I had phoned, I actually visited a police station to make a statement, about my passport especially? You know nothing about these things?

B A: No.

Q: You were simply taken off traffic duty, "Go and arrest that man," no, "Go and make an enquiry, make your decision on the (inaudible)," and you decided to arrest me?

A: (no audible response)

C Q: Did anybody else tell you to go and arrest me?

A: No.

D Q: So we are relying on your assessment of the situation as to whether Rogan should be arrested for theft or being a party to a theft, aiding and abetting, or that I am to be arrested? That was your decision, was it not?

A: Yes.

Q: Why could we not have both been arrested?

E A: Because I was presented with somebody who said they had been assaulted.

Q: Yes.

A: They showed the injuries that they had sustained.

F Q: Yes.

A: And the person responsible, being yourself, was in a prohibited area that you shouldn't have been in.

G Q: Ah, you mean the fact I was in a prohibited area influenced your decision not to arrest him but to arrest me?

A: No, I am just stating the facts. I decided to arrest you for common assault because of the injuries that were shown to me by Mr Rogan and what he had told me had happened.

H Q: So you then called for Police Officer Watts?

A: Yes.

A Q: You are aware that I had been to see him at the police station and he told me to go down to the prison to get it, they had found it?

A: No.

B Q: You know nothing about that?

A: No.

C Q: It is all over the websites? It is all over, it was in the court case previously when the court refused to let me have any witness summonses? Are you telling me you know nothing about Mr Watts' involvement other than him coming in the van and picking me up?

A: That's what I'm saying, yes.

D Q: But I spoke to Mr Watts. Yes, he is a chap that I know well and I get on with him, well with him, which is why I was happy to speak to him before I came down to the prison. Are you saying that you know nothing that Police Officer Watts's previous involvement with me physically going to the police station, I am sure it will be recorded on video, and saying, "Look, Her Ladyship has said I can go to France," I cannot cross the Rubicon, but I can go down to the prison and most likely they would hand back my passport? You know nothing about any of that, is that what you are telling this court?

A: Yes.

F Q: Right. So he turns up in the van, you leave the scene and that is the end of the case with you, is it not, you did not really have anything (inaudible)?

A: That's correct, yeah.

G **THE APPELLANT:** Your Honour, I need an adjournment, because I need access to, I had had a letter from Luigi Strinati, the manager of the courts, who of course has stopped these letters from getting to you before this hearing. He is the one that applied to London for me to be classified as a vexatious litigant in 2003, and that is history that he has caused the loss of a lot of files relating to the Royal College of Veterinary Surgeons and the case that is currently before H His Honour Judge Seys Llewellyn. I had a letter from the court saying that I am not entitled to

A the records of the Magistrates' Court. On this occasion (inaudible) because this officer has gone that extra (inaudible) ...

**JUDGE CROWTHER:** Just let me pause for a moment, Mr Kirk.

B **THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** Let me pause for a moment. I am recollecting the course of the previous hearing and I seem to recall that the clerk's notes were disclosed to you during the course of the last hearing.

C **MR SMYTH:** I actually attended at the Magistrates' Court myself to obtain a copy. I have them here and I have been reading them carefully and going through the evidence, comparing it to the evidence on the last occasion. Mr Kirk is privy to this, or he should be.

D **THE APPELLANT:** Well I need, if I can have a copy? Did I, are we saying that I got those ...

**JUDGE CROWTHER:** Yes.

**THE APPELLANT:** ... from your case (inaudible) ...

E **JUDGE CROWTHER:** I ordered, this was your hearing in the Magistrates' Court, yes, of this case.

**MR SMYTH:** Yes.

**THE APPELLANT:** No, no. Did you help me get these during the adjourned (inaudible)?

F **JUDGE CROWTHER:** Yes, I ordered them at the last hearing ...

**THE APPELLANT:** Right.

**JUDGE CROWTHER:** ... and Mr Smyth, I think, between day one and day two of the last hearing ...

G **THE APPELLANT:** Good.

**JUDGE CROWTHER:** ... went to the Magistrates' Court and got them for you and gave them to you on the next day.

H **THE APPELLANT:** How many days, have we had more than one day, have we?

**JUDGE CROWTHER:** We had two days.

A **THE APPELLANT:** Right. So I did not have them for the first day, right.

**JUDGE CROWTHER:** That is right.

B **THE APPELLANT:** Well I will look again. I have been, I am having great difficulty getting at my legal papers while I am ... do you realise Mr Rogan locks me up at night? You know, he segregates me on the way to church on a Sunday and, and grins through the grill and lets all the other go. Do you understand what it is like being in prison, your Honour, especially when they have a vested interest? I wonder.

C **JUDGE CROWTHER:** Mr Kirk, you were making an application for an adjournment. Now that I have pointed out that you have the Magistrates' records, do you pursue that application for an adjournment?

D **THE APPELLANT:** Well if I could borrow his notes, I could carry on with the notes.

**JUDGE CROWTHER:** No, you have had the notes, Mr Kirk.

E **THE APPELLANT:** Well they are not with me, they are not available. Can I not read, can I not... I wish to refer to the fact that there was evidence of what he said (inaudible) wrote saying I was not entitled to the records. Well you have obviously helped me out and got them, and I now remember they were, yes, they were badly photocopied, that is right. Quite right, I do (inaudible) where I got them, I, which day it was, it was apparently on the second day, was it, looked at. It is the content of it that I wish to now put, because there must be record of it, of what was said before. Am I not entitled?

F **JUDGE CROWTHER:** Well you have got what records there are, Mr Kirk ...

**THE APPELLANT:** No, I have not.

G **JUDGE CROWTHER:** ... of what was ...

**MR SMYTH:** If I can perhaps assist, I have a spare copy. Having looked at them, I do not think there is anything ...

H **JUDGE CROWTHER:** No, I am not going to adjourn this case at this stage for those notes to be recopied. Mr Kirk has had them and you have said there is no inconsistency between the

A evidence that has been given now and the evidence that has been given previously, so I am not  
going to adjourn the case. Yes, do you have any more questions of the officer, please, Mr Kirk?

**THE APPELLANT:** Hang on. Have I misheard, the barrister say there is no inconsistency to  
B what was said at the previous hearing, when we have all heard a completely different story, from  
you, me and I do not know who was, oh, I do not know who was prosecuting that first time.  
Was, was, excuse me, was Mr Smyth prosecuting at the Magistrates'?

**JUDGE CROWTHER:** I know nothing about what happened in the Magistrates', Mr Kirk.

**THE APPELLANT:** Well, well that need to be established in order to answer whether Mr ...

**JUDGE CROWTHER:** Mr Smyth has in his possession the notes of the Magistrates' Court  
C clerk, which he secured last time at my direction, and which were then disclosed to you.

**THE APPELLANT:** Well it is (inaudible) ...

**JUDGE CROWTHER:** Do you have any more questions for the officer, Mr Kirk?

**THE APPELLANT:** I need to know whether Mr Smyth was involved with the Magistrates' ...

**JUDGE CROWTHER:** No, no, no, I am not having any investigation of Mr Smyth's role. We  
E will continue.

**THE APPELLANT:** Well yes or no, was he there or not?

**JUDGE CROWTHER:** Do you have any further questions for the officer?

**THE APPELLANT:** No, but ...

**JUDGE CROWTHER:** No.

**THE APPELLANT:** ... I understand Mr Smyth ...

**JUDGE CROWTHER:** Thank you. Would you sit down and I will ask Mr Smyth if he wishes  
G to re-examine. Do you wish to re-examine?

**MR SMYTH:** I have no further questions, your Honour, thank you.

**JUDGE CROWTHER:** No. Thank you very much, you are released. Please do not discuss  
H the evidence you have given with any other officer who may yet give evidence in this case.

**THE WITNESS:** Yes, thank you.

A **JUDGE CROWTHER:** Thank you.

**(The witness withdrew)**

**THE APPELLANT:** Can I have the notes that Mr Smyth (inaudible) ...

B **JUDGE CROWTHER:** You have them, Mr Kirk.

**THE APPELLANT:** ... before the next witness? Is that unreasonable to ask?

**JUDGE CROWTHER:** No, it is not, which is why they were disclosed to you at a previous hearing. They will be copied during the course of the morning and you will have them, but at the moment you can call your next witness.

**MR SMYTH:** This is spare, if it assists.

**JUDGE CROWTHER:** Well if it is a spare copy, thank you very much.

D **MR SMYTH:** PC Howell, please.

**JUDGE CROWTHER:** Thank you.

**MR SMYTH:** Your Honour, this witness deals with the visit, as we have heard from the police officer. She could also assist me with the interview and reading that out, if that is the way we intend to proceed, but can I deal with the factual ...?

**JUDGE CROWTHER:** Just deal with the substantive part first.

**MR SMYTH:** Yes, yes.

F

**PC 5146 VICTORIA HOWELL – Sworn**

**Examination-in-Chief by MR SMYTH**

G **MR SMYTH:** Could you please identify yourself for the court?

**THE WITNESS:** Yes, I am Police Constable 5146 Victoria Howell.

**Q:** Were you on duty on 21<sup>st</sup> September 2013 in company with Police Constable Mason?

**A:** Yes.

H

A Q: And at about 13.15, a quarter past one in the afternoon, did you receive a call via your personal radio?

A: Yes.

B Q: What was the nature of that call?

A: (inaudible – coughing) control room informed us that there was a call to Cardiff Prison, a male by the name of Maurice Kirk had rang the control room asking for police in relation to his passport. I believe he stated he needed police there otherwise he was going to kick up a fuss.

C Q: Did you then go in company with PC Mason to Cardiff Prison?

A: Yes.

Q: Arriving there at about 13.45 hours?

A: Yes.

D Q: Can you take us, in detail, through what happened when you arrived. Where did you go first?

E A: We initially went to the main reception and spoke to a member of staff there. He said that Mr Kirk was inside the holding lock area and to go to the holding area, which we did. The holding lock area is shutters where the vehicles go into, so there is a buzzer outside and ...

Q: Can I stop you a minute?

A: ... we were, gained, we gained access to that from the staff.

F Q: Can I just stop you there?

A: Yes.

Q: Were the doors open or shut to the vehicle lock area?

G A: They were closed.

Q: And how were you able to gain access?

H A: There is a buzzer on the side, which connects to a member of staff who is stood inside the locker.

A Q: After all this time, can you remember which of you, yourself or your colleague, pressed the buzzer?

A: I couldn't tell you, I'm sorry.

B Q: Were you able to gain access, however, to the vehicle lock?

A: Yes.

Q: And once inside, who, who, if anyone, did you see there?

A: I could see a male who I now know to be Mr Kirk. He was at the far end of the locked area.

C Q: What was he doing?

A: He was say on a chair, I believe.

Q: Was he doing anything in particular, can you recall?

A: No. There was, there was quite a high chair and he was sat on that.

D Q: Anybody else did you see?

A: There was a prison guard, Mr Rogan.

Q: Where was he, exactly?

E A: He was stood at the nearest point of the vehicle lock. There's a security box and he was just outside that.

Q: Did you ever have yourself or overhear any conversation with Mr Rogan?

A: Yeah, me and my colleague spoke to him and, and he told us what was happening.

F Q: What did he tell you?

A: He stated that Mr Kirk was outside the holding lock area, he had opened the shutter door to find out what he was doing. On going outside, Mr Kirk ran over to the holding area. Mr Rogan stated he followed him back into the holding area, where Mr Kirk accused him of stealing his passport and attempted to arrest him.

G Q: Did he indicate, that is, did Mr Rogan indicate how exactly Mr Kirk had attempted to effect an arrest?

H A: He stated that Mr Kirk had grabbed his shoulder and his arm.

A Q: What action did either you or your colleague then take as a result of what you had been told?

A: PC Mason spoke to Mr Kirk and arrested him for assault.

Q: Were you with your colleague when that happened?

A: Yes.

B Q: But who was it of the pair of you that actually effected the arrest?

A: PC Mason.

Q: And the grounds of that arrest given were what?

C A: I believe it was prompt and effective, and to prevent any further injury to anyone else.

Q: What happened to Mr Kirk after the arrest?

D A: We waited a short while for a police van to attend. We then escorted Mr Kirk into the rear of the van. My colleagues then took him down to Cardiff Bay custody and me and PC Mason remained at the prison in order to take a statement.

Q: Did you play any further part in the investigation?

A: No.

E MR SMYTH: Thank you. That is all I wanted to ask you about the incident. I may need later to ask your assistance on another matter, but so far as the actual incident itself is concerned, that is all I need to ask, but could you wait there, because there may be some further questions for you.

F JUDGE CROWTHER: Yes, Mr Kirk.

**Cross-examination by THE APPELLANT**

G THE APPELLANT: What did you do about my complaint?

THE WITNESS: No complaint was made to me formally in relation to anything.

Q: Sorry, what do you mean by that?

A: No, at the time you did not make a complaint to me, Mr Kirk, in relation to anything.

Q: Did you hear me make a complaint to anybody?

H A: No.

A **THE APPELLANT:** Right, thank you.

**JUDGE CROWTHER:** Thank you very much. Well do you want to deal with interviews then?

B **MR SMYTH:** Yes. Your Honour, there were two interviews. I do not, myself, seek to rely upon the first, but the second we have a 19 page summary of it. I would propose, unless Mr Kirk makes to make submissions otherwise, that we now go through that interview.

**JUDGE CROWTHER:** Yes. Any reason why we should not hear the summary of your second interview, Mr Kirk?

C **THE APPELLANT:** I asked if this witness could come with a notebook. Could that be left with the court?

**JUDGE CROWTHER:** Well cross-examination has finished. Do you have a notebook record of your attendance on 21<sup>st</sup> September.

**THE WITNESS:** I do. It is outside.

**JUDGE CROWTHER:** Yes. Could you go and get it, please?

E **THE WITNESS:** Yes, not a problem.

**THE APPELLANT:** Sorry, you were asking me something else?

**JUDGE CROWTHER:** Interviews, Mr Kirk. Can we read the second of your interviews now? The prosecution does not rely on the first interview and they do not suggest that helps them or helps you, I suspect.

F **THE APPELLANT:** (inaudible)

**MR SMYTH:** It is purely a discussion about procedure.

G **THE APPELLANT:** Yes. If he says so, I accept it.

**JUDGE CROWTHER:** All right, thank you very much.

**THE APPELLANT:** The, the issue is, is that of course it is eight months, nine months now, eight months, over, it is nearly nine months now I have been asking to see them, because H apparently they have (inaudible) DVD and you are able to actually see (inaudible) witness

A through, sorry, the accused being interrogated under caution. So could I, the prison (inaudible) give me the facility to look at any of these issues.

**JUDGE CROWTHER:** How long is the DVD, Mr Smyth?

B **MR SMYTH:** 35 minutes, your Honour.

**JUDGE CROWTHER:** How long?

**MR SMYTH:** 35.

**JUDGE CROWTHER:** 35 minutes. Well rather than going through it with the officer, let us watch the DVD.

**MR SMYTH:** Yes.

**JUDGE CROWTHER:** Mr Kirk can see it as well. I can tell you, Mr Kirk, the notebook says, the relevant entries, "13.45, David Rogan," and gives his birthday, "HMP prison, Maurice Kirk, HMP prison. 14.09, assault whilst arresting him." So the quote there, "Assault whilst arresting him," what does that mean?

**THE WITNESS:** That was just, I spoke to David Rogan and I just wrote down ...

E **JUDGE CROWTHER:** It is a summary of what Mr Rogan was saying?

**THE WITNESS:** Yes, basically, yes.

**JUDGE CROWTHER:** All right. Well thank you for bringing that.

**THE APPELLANT:** No, no, no, no, no ... please?

F **JUDGE CROWTHER:** Hold on.

**THE APPELLANT:** What was on it just before he, she wrote that, and what is (inaudible) ...?

**JUDGE CROWTHER:** I have read it out to you and I have in mind what you are saying, and I am going to ask that the relevant parts, that is 13.45 and 14.09, are copied. If the prosecution could do that, so no other irrelevant entries are copied.

**THE APPELLANT:** I wish to have sight of, unless there is security reasons, to see what was written immediately before and immediately after the cherry picking that this court appears to be doing.

A **JUDGE CROWTHER:** No, Mr Kirk, I have looked at the notebook and I have directed that the relevant ...

**THE APPELLANT:** Yes, but I have not.

B **JUDGE CROWTHER:** ... I have directed that the relevant parts be photocopied and disclosed to you. Mr Smyth, if we are in fact to watch the DVD, do we need this officer to remain?

**MR SMYTH:** No.

**JUDGE CROWTHER:** No.

C

**Re-examination by MR SMYTH**

**MR SMYTH:** But just apropos that last point, can I just seek to clarify this, there was a short entry in your notebook. Did you make a further entries in a statement form?

D **THE WITNESS:** Yes, my statement was my original notes, which was the statement that was given to you.

**Q:** The statement that you made on the ...

E **A:** Yes.

**Q:** ... sorry, the 21<sup>st</sup> of ... in fact, when did you make up your statement notes?

**A:** My pocket notebook or my statement?

F **Q:** Statement notes.

**A:** My statement was done probably within an hour of the incident. We left the prison and we went straight back to the police station and completed our statements.

**MR SMYTH:** Thank you. Unless any other matters arising, we can play the interview.

G **JUDGE CROWTHER:** And you can be released. Thank you very much for coming.

**THE WITNESS:** Thank you very much.

H **THE APPELLANT:** Now, your Honour, the issue that now has arisen is of course, at the moment we have not established from this witness who was there when I, when I say that I carried out a private person's arrest.

A **JUDGE CROWTHER:** Well she was not there then, was she?

**THE APPELLANT:** No, no, but she would have made enquires, I hope.

**JUDGE CROWTHER:** Well ...

B **THE APPELLANT:** I am only saying, I was waiting for you to introduce this, but (inaudible) because it looks as if I am going to have to do this, because this is the crux of the matter.

**JUDGE CROWTHER:** Well, Mr Kirk, you have shown a pretty effective understanding of what cross-examination is about and you told you had finished, but if you want to carry on cross-examining, of course you will have that opportunity.

C **THE APPELLANT:** No, it is because we are now going to see a video that I had asked to see six months, nine months ago, and, and when I was at the stage of cross-examining these witnesses at both court cases I was denied access to it in order to see it.

D **JUDGE CROWTHER:** Do you want to ask this witness any questions?

**Further cross-examination by THE APPELLANT**

E **THE APPELLANT:** Well I think, I do not think Mr Smyth is going to object, but what has arisen is that if I am going to see the video, by the end of the video I am going to be asking what I must have raised in interview. I would be surprised if I did not. And that would be, officer, when you arrived and pressed the button and, and the door opened, how many officers were in, F how many prison staff were (inaudible)?

**THE WITNESS:** From what I recall, there was just Mr Rogan at the time.

**Q:** So by the time that you arrested me, how many were there?

G **A:** I don't recall the number of officers. There's a room, where the airlock is there's a security box, so there's a room which leads to the other reception areas, so there was quite a few prison officers inside that area. I only spoke to David Rogan.

H **Q:** No. Who did you see? How many faces did you see through the glass?

**A:** Only David Rogan.

A Q: Sorry?

A: Only David Rogan.

Q: No, he was in the vehicle lock.

B A: There was nobody behind that glass security box when in entered.

Q: So how does that man know when to open the door and not open the door? Who opened the door to you?

A: I couldn't tell you that.

C Q: Well was it Mr Rogan, yes or no?

A: I don't know.

**JUDGE CROWTHER:** Well, the person on the other end of the buzzer, I suppose?

D A: Yes. I am not sure where that buzzer connect to, but obviously they knew it was police outside.

**THE APPELLANT:** That person on the other end of the buzzer would have to have a camera in order to see who is standing outside?

E A: I couldn't tell you how it works.

Q: Did you make any attempt to establish how it worked?

A: No.

F Q: So after I was arrested, did you make any enquiries before you had left the scene of the incident?

A: We did, yes. Mr Rogan spoke to his colleagues in relation to the passport. I believe one of the governors, I couldn't tell you who it was, who was on duty at the time, came down and he started that he wasn't able, able to get the passport at that time.

G Q: Yes, but that is what I was, I had been told to go there by the police, a Mr Watts, the driver of the car. Do you remember the driver of the car?

A: Yes.

H Q: Yes, well I went to see him at the police station before I went down there.

A A: I wasn't aware of that.  
Q: You are not aware of that?  
A: No.  
Q: Even though this was all raised at the lower court?  
B A: I wasn't aware before I went to the prison that you had already been ...  
Q: (inaudible)  
A: ... to the police station.  
C Q: Now, did you know about it after we had heard evidence in the Magistrates' Court on 10<sup>th</sup> December, the day they signed that treaty at?  
A: I was made aware at Magistrates' by Mr Kirk that he had attended Cardiff, sorry, Cardiff Police Station, prior to going to the prison.  
D Q: Sorry, say that again, please.  
A: I was made aware that you had attended Cardiff Central Police Station ...  
Q: Yes.  
E A: ... at Cardiff Magistrates' Court by yourself.  
Q: Yes. Yes?  
A: Yes.  
F Q: To ask for assistance following Her Honour, Her Ladyship, Her Honour Judge Eleri Rees, indicating that the withholding of the passport had nothing to do with the law courts, it was a matter for someone else. You were aware of all that before you walked in this door, were you not?  
G A: Yes.  
Q: Any part of it?  
A: When we were at Cardiff Magistrates' Court, Mr Kirk brought this up and he made me  
H aware at that time that he had gone to the police station prior to going to the prison. However, that was the first time I knew about him being at the police station.

A **Q:** But Governor Aggett said that the prison had lost it. That is what you walked away with, is it not? They could not find it. That is, that is what they told ... they must, well what else, what did they actually tell you where it was?

B **A:** The staff informed me that it was locked in a secure safe, and because of the weekend they weren't able to gain access to that safe.

**THE APPELLANT:** So why have people not heard about this before?

**JUDGE CROWTHER:** Well we heard that from Governor Rowe.

C **THE APPELLANT:** No, at the Magistrates', why did we not hear this at the Magistrates'?

**THE WITNESS:** I don't remember if I ...

**JUDGE CROWTHER:** Were you asked about it?

D **THE WITNESS:** I can't recall if I was asked about it at the Magistrates'.

**JUDGE CROWTHER:** Have you have got the notes, Mr Smyth?

**THE APPELLANT:** No, I have not quite, (inaudible). I went to the (inaudible) ...

E **JUDGE CROWTHER:** Well hold on, let Mr Smyth look at the notes of the Magistrates' Court hearing. After all, you have suggested it is the first time the officer said so, so let us find out.

**THE APPELLANT:** I did not hear what you had asked Mr Smyth, I am sorry, I apologise.

**MR SMYTH: (pause)** There does not appear to be a reference at all to the issue.

F **JUDGE CROWTHER:** No, all right. Thank you very much. The notes, Mr Kirk, tend to suggest that the officer was not asked the question.

**THE APPELLANT:** Are you aware that when I went to get an alternative at Newport I had been to the police station again?

G **THE WITNESS:** I wasn't aware of that, no.

**Q:** You were not aware of that, and you were not aware that they refused to give me a new passport because the police had told them not to?

H **A:** I am not aware of that, no.

A **THE APPELLANT:** You are not aware of that. Is there any officer available who is prepared to tell this court that information, which of course I police record?

**JUDGE CROWTHER:** She cannot possibly know that, can she?

B **THE APPELLANT:** Well I was not going to get it from the first police officer and I would be surprised if we got it from you, but we never know; without asking the question you never know. (inaudible) see the point until I get an adjournment. I know videos are here which I wish to see, they have only just been sent into me. Because they if they are going to produce videos, why can't I? So I need an adjournment anyway, but I am quite happy to see the, the ... over lunch I would like to have the facility to play these. You see, it has taken nine months to get these to me, because the prison have blocked them time and time, despite the document that I served on this court, where the judge was saying, "Please assist him in what he ..." what is considered reasonable within prison grounds.

**JUDGE CROWTHER:** Do you have any other questions for this witness, Mr Kirk?

**THE APPELLANT:** No, no, no.

E **JUDGE CROWTHER:** No. Thank you very much.

**MR SMYTH:** Can I just clarify what I said?

**JUDGE CROWTHER:** Yes.

F **MR SMYTH:** I have had a moment to read more carefully. Reading from the notes, under cross-examination: "PC Watts came from the van. PC Watts didn't tell me he told you to go to the prison." That is all that is recorded on that.

**JUDGE CROWTHER:** Yes.

G **MR SMYTH:** I am sorry, I did not pick that up initially.

**JUDGE CROWTHER:** I do not think Mr Kirk heard.

**THE APPELLANT:** I missed that.

**MR SMYTH:** Yes.

H **THE APPELLANT:** I missed what was said. Was there nothing about it or what?

A **MR SMYTH:** Yes, the only entry in the evidence, these are the notes of the evidence of this officer in the Magistrates' Court: "PC Watts came from the van. PC Watts didn't tell me he told you to go to the prison. I didn't work from Cardiff Bay Police Station."

B **JUDGE CROWTHER:** Yes, thank you. Yes, well you are now released. Thank you very much.

**MR SMYTH:** Your Honour, can I just ask that she wait moment, because there may be administrative matter she can help with me.

C **JUDGE CROWTHER:** It is a matter for you, it is a matter for you.

**MR SMYTH:** Thank you, yes.

**JUDGE CROWTHER:** But you can leave court.

D **THE WITNESS:** Thank you.

**(The witness withdrew)**

**THE APPELLANT:** Can I serve those documents on this court?

**JUDGE CROWTHER:** Now what documents are those, Mr Kirk?

E **THE APPELLANT:** Wherever, wherever he was referring ...

**JUDGE CROWTHER:** They are the notes that you had last time and that you have just had another copy of.

F **THE APPELLANT:** Yes, yes, yes, well this one is legible and I will read them over lunch, but I have not got time now.

**JUDGE CROWTHER:** Right, well shall we get on with the interview?

G **THE APPELLANT:** I need to know whether they are going to be introduced for you, because if that sort of information is in there, you really out to be seeing ... I thought as a sitting judge, do you not, do you not have the, sorry, the, the legal right to study the evidence ...

**JUDGE CROWTHER:** No.

H **THE APPELLANT:** ... not necessarily for their Worships, but ...

**JUDGE CROWTHER:** No, it is for the parties to choose what evidence to adduce, Mr Kirk.

A **THE APPELLANT:** No, I am talking about justice. Justice.

**JUDGE CROWTHER:** It is for the parties to choose what evidence ...

**THE APPELLANT:** Well, well ...

B **JUDGE CROWTHER:** ... to adduce, Mr Kirk. The prosecution has not sought to put in evidence ...

**THE APPELLANT:** But they were ...

**JUDGE CROWTHER:** ... the notes of the Magistrates' Court hearing.

C **THE APPELLANT:** Yes, but, but they ...

**JUDGE CROWTHER:** They are in evidence to the extent to which they have been cross-examined upon and accepted by the witnesses, which is, at the moment, not at all, I think.

D **THE APPELLANT:** Well we are not getting much out of either of them as to the issues that should be before this court, because they are withholding the officers who have got the evidence, and, and at least if something is said on this court record, even though they attempted, and you have intervened and I am grateful, I forgot that, on the second day of this hearing, to let me have

E a copy. And it, what I have just heard, and because I remember what was being said, especially by the magistrate, he said, "Well it's all on video anyway, of course you assaulted him, you put your hand on his shoulder." He came out with comments like that. Well you, at least, should have, I believe, and by the way one of my letters is an application of an abuse of, an abuse of

F process that you should have had in advance of this hearing to assist the manner in which this case is to be conducted.

**JUDGE CROWTHER:** Yes, I think you have just handed that to me. Do you want to pursue

G that now?

**THE APPELLANT:** Has, has that one got 'abuse of process' written on it?

**JUDGE CROWTHER:** Yes, it does.

H **THE APPELLANT:** No, well there are four that go to you and until I have read them and seen them ... let us, if it is convenient to the court, let us just get rid of this DVD thing ...

A **JUDGE CROWTHER:** Yes.

**THE APPELLANT:** ... so at least I can see it. When I go for lunch, (inaudible), when I go for lunch, if I could have, I need to look at this, because it has taken, as I say, until only last week  
B Aggett, the witness who apparently needs to be called, allowed this to come into my possession  
three days ago or four days ago. This is a DVD of the trial, the last one I have just been, and of course they (inaudible) ...

**JUDGE CROWTHER:** I am sorry, I do not understand. What is that?

C **THE APPELLANT:** Well I do not know yet, until I open it, but I have been told it is DVDs relating to this case.

**JUDGE CROWTHER:** You said, "DVD of the trial," and what does that mean?

D **THE APPELLANT:** Oh, that was the previous trial, and to be used in the next trial, but they have not listed that. But, but (inaudible), the relevance of this to this trial, there indication on one of these and I am going to find out which one it is, because they are not marked, and I, and I need the facilities, like if I, now if I was leading a representative, even the prisoners in the prison, they  
E are allowed to see the custody videos in custody. I am not. Time and time again I have been refused. Why? Because they are appearing to be the complainant in this case, which is why it is on a list that this is an abuse of process for this case to ever have been brought in the first place. But let us, I am taking up precious time to fit in with your lunch break, your Honour, (inaudible)  
F ...

**JUDGE CROWTHER:** Well it is your lunch break too, Mr Kirk, and you have been on your feet ...

G **THE APPELLANT:** I do not need, I do not have time for lunch breaks.

**JUDGE CROWTHER:** You have been on your feet all morning, so you will need to have a break. Now shall we make what progress we can with the interview DVD before the lunch  
H break?

**THE APPELLANT:** Yes, yes.

A **JUDGE CROWTHER:** Mr Smyth, after the DVD, is that then the close of the prosecution case?

**MR SMYTH:** Yes.

B **JUDGE CROWTHER:** Yes, well it may be that at that stage we adjourn and give Mr Kirk the afternoon to make what preparations he needs for his case ...

**MR SMYTH:** Yes.

**JUDGE CROWTHER:** ... and we will begin that in the morning,

C **MR SMYTH:** Yes.

**JUDGE CROWTHER:** Does that suit you, Mr Kirk?

**THE APPELLANT:** Oh, you mean tomorrow?

D **JUDGE CROWTHER:** Yes, that we finish the DVD today. We will do 20 minutes now and 20 minutes after lunch, and you can then have the afternoon to consider how best you present the defence case, which we will start tomorrow.

E **THE APPELLANT:** I am grateful. But what about my witness summonses that have been served on the court.

**JUDGE CROWTHER:** I have had no application for witness summons, Mr Kirk.

F **THE APPELLANT:** Well you have not, but I have sent them to the Crown Court along with those letters, the ones, it was (inaudible) do, do I, is this the time to ask you to recuse yourself. All sorts of documents have come to the court (inaudible) ...

**JUDGE CROWTHER:** Well are you asking me to recuse myself, Mr Kirk?

G **THE APPELLANT:** No, no, I, you are not cherry picking with me. I have had too much of this building. Not this one, it is absolutely fantastic to be in Newport, a different frame of mind, and people ... it is wonderful. I wish I had had all my cases here. No, in Cardiff Crown Court all this nonsense has gone over 22, for 22 years. But what I am asking you is, surely I am entitled to a reply to the letters that I sent to the Crown Court in ample time for you to see?

H

A **JUDGE CROWTHER:** Did you not say, Mr Kirk, you had also sent them to your friend and he has not received them?

**THE APPELLANT:** That is more than one, apparently. I have now found out that in fact I sent a full list to, to, in fact one of the people here in the court room, and a full list to somebody in London with the view of trying to get a lawyer to argue in the Royal Courts of Justice, that I must be allowed access to legal representation, just (inaudible) ...

**JUDGE CROWTHER:** Let us hear the interview. Let us allow the prosecution ...

C **THE APPELLANT:** Yes, thank you.

**JUDGE CROWTHER:** ... to close its case. Then you know what you face. Then you can take time this afternoon ...

D **THE APPELLANT:** No, no, no, no, I need ...

**JUDGE CROWTHER:** Hold on. Then you can take time this afternoon to consider how best to muster the defence case, and you can consider this afternoon whether you want to make application for witness summonses in the morning and I will, of course, hear those then.

E **THE APPELLANT:** Yes. I do not wish to appear facetious, but I knew what I was facing before I went down to the prison. I knew that any risk of me entering a police station or prison or that sort of system in South Wales, I was a target. I did not know that I had been re-registered MAPPA Level 3; not that it would stop me going down there. And until I get disclosure, which is what this case is about, I, I am not going to waste a lot more time on this case, and I would like to give you notice on that (inaudible).

**JUDGE CROWTHER:** I am sorry, I simply did not ...

G **THE APPELLANT:** I would like to give you notice ...

**JUDGE CROWTHER:** I simply did not hear that, Mr Kirk.

**THE APPELLANT:** I see little point in me wasting much more time in this case, because I have heard all I wanted to hear from the two police officers.

H **JUDGE CROWTHER:** Right, so how do you want to proceed, Mr Kirk?

A **THE APPELLANT:** I want the witnesses that were at the scene of the alleged offence to be made to give evidence on oath.

**JUDGE CROWTHER:** Do you know their names?

B **THE APPELLANT:** I gave you some of them. One was a Mr Reid, R E I D, who was there throughout. There was ...

**JUDGE CROWTHER:** Hold on. Let me write this down. Reid is a governor, is he?

**THE APPELLANT:** No, no, he is the one that opened and closed the door.

C **JUDGE CROWTHER:** Yes.

**THE APPELLANT:** There was a Prison Officer Thomas.

**JUDGE CROWTHER:** Yes.

D **THE APPELLANT:** And another one I identified and named, but for the moment I cannot remember. I have asked for witness summonses ... Aggett was, was, and Rowe, you have heard of Rowe. I want her in court, by the way.

**JUDGE CROWTHER:** Aggett is a governor, yes?

E **THE APPELLANT:** Well, well they are all deputy governors, actually. Mr Cross is the number one governor, now, and he has nothing to do with this case.

**JUDGE CROWTHER:** Right.

F **THE APPELLANT:** Well, except that he is the boss, if you catch my drift. There were other names too.

**JUDGE CROWTHER:** Now if you are making a ...

**THE APPELLANT:** Oh, oh, oh, the driver, the police officer.

G **JUDGE CROWTHER:** Hold on, Mr Kirk. Is that all or are there police officers as well?

**THE APPELLANT:** Yes, the driver.

**JUDGE CROWTHER:** You want Wills, you have told us. Was his name Wills.

**MR SMYTH:** Watts.

H **JUDGE CROWTHER:** Watts.

A **MR SMYTH:** Watts, and the, the confirmation that, that what I said that her Ladyship indicated  
is in fact true. There must be ...

**JUDGE CROWTHER:** Well I am not issuing a witness summons for the Recorder of Cardiff,  
I can tell you that now.

B **THE APPELLANT:** No, no, no, no, no, she is far too busy a lady. I want court records that  
that was said, and in any event, I might have records of it anyway, but that is not available for me  
today, because I did not think it was going to have to, I was going to have to go to the line on  
C that. Now the next subject is, of course, the Passport Office at Newport, my visiting a police, a  
police organisation outside the control of the South Wales Police, namely the Gwent Police,  
where I made detailed complaint about everything that is going on in this case today. All these  
D records, and my telephone calls, and times and dates, are not only critical, but they have already  
been transcribed, and if not, I need to hear them. And now you can see, which becomes relevant,  
are your decisions about was my conduct under Section 25(a) of the '84 Act, PACE, was it, did I  
have reasonable cause? Because if I have, we can slow the amount of witnesses and evidence  
E we need and just deal with, was the actual assault done in a lawful manner?

**JUDGE CROWTHER:** Well that is what this case is about.

**THE APPELLANT:** No, it is not. It is, it is to do with that, plus did I have reasonable cause  
(inaudible)? And Section, Section 4(b) of the same section, goes further, but I am not allowed  
F anywhere near the library. I have not been down to the prison library this side of Christmas, and  
they have made sure that I cannot get access to the laws, and this gentleman here, who has just  
come late, would like to confirm his involvement, which was to do with that, and I would ask  
G that I finish on this matter, that he will confirm his involvement, and what I had asked him to do  
in October. Could you just say something to support what I am saying on access to a lawyer,  
access to the rule of law, access to a fair trial? Oh, his name is Mr Irwin, for the record. I have  
asked him to just confirm the aspects. It is entirely up to you, you can ask him what you like, but  
H I feel it is just, yes ... (inaudible) I cannot lead him, he is here, so I will not say anymore.

A **JUDGE CROWTHER:** Yes, thank you. I am going to take a moment to give a ruling on the application for witness summonses. **(pause)**

B

### RULING

C **JUDGE CROWTHER:** Yes, in this case, Mr Maurice Kirk, who is an experienced litigant, though represents himself today with the assistance of a McKenzie friend, in an appeal against conviction for assaulting David Rogan, a prison officer, on 21<sup>st</sup> September last. The allegation is that Mr Kirk attended at the prison to retrieve a passport which had been secured there whilst he was on remand. Mr Kirk had been bailed by the Recorder of Cardiff and on his release from D prison had refused to sign the documents which were necessary to obtain that passport. On that occasion he threw himself to the floor and, we have heard, had to be put out physically.

E He returned on 21<sup>st</sup> September asking for his passport. That was a weekend and the evidence is that arrangements were not in place to access the secure area where the passport was kept, on that day. Mr Kirk then went to a secure area called the vehicle lock and Mr Rogan was sent to ask him to leave. It is the prosecution case that Mr Kirk put his hands on Mr Rogan in what Mr Kirk described as a 'private person's arrest'. The evidence is that they were alone in the F vehicle lock and that security cameras did not operate inside lock. Mr Kirk raises an eyebrow at that, but it is the evidence before us.

G Mr Kirk now seeks to have issued witness summonses against various prison officers and governors. There is no suggestion, on the evidence we have heard, that any one was a witness to this incident. He further seeks the attendance of police officers who attended subsequently and subsequent attendance is, it seems to us, beyond the nub of this case. Yet further, he seeks H witness summonses for officers of the Newport Passport Office and of the Gwent Police, to

A whom he complained. It is beyond us how that could go to the issue between Mr Kirk and Mr Rogan.

B Accordingly, we are all of the view that no material evidence can be given by any of these witnesses set out by Mr Kirk, and accordingly his application for witness summonses are each refused.

Thank you very much, Mr Kirk.

C **THE APPELLANT:** Your Honour, you remember the fact that I went down there on several occasions that are not in the evidence, which is why I want proper disclosure. I went down there on four separate occasions.

D **JUDGE CROWTHER:** I have given our ruling, Mr Kirk, and it is not going to change. I have not overlooked the points you have made. Thank you very much.

E **THE APPELLANT:** Thank you. I have now found the letters which I wish to leave with you. One is addressed to you, an application to lift PII restrictions. There is another one here, a position statement addressed to this court. There is one here to Luigi Strinati dated 18<sup>th</sup> June. There is one here of 18<sup>th</sup> June to the Cardiff Crown Court. There is one here of 12<sup>th</sup> October 2013.

F **JUDGE CROWTHER:** Well the next part of the case, Mr Kirk, is for us to hear the interview, is it not?

**THE APPELLANT:** Are you refusing to accept these letters?

**JUDGE CROWTHER:** The next part of the case is for us to hear the interview.

**THE APPELLANT:** Are you refusing to accept these letters?

G **JUDGE CROWTHER:** Mr Kirk, I am not going to consider your application until the proper time. I am going to allow the prosecution to carry on calling their evidence, which is simply the evidence of interview. It seems to me to be important that we progress the case. Once the H prosecution has adduced that evidence, I will hear any further application you wish to make.

A **THE APPELLANT:** Well this runs the risk of you deciding in the interest of justice, but the lifting of PII restrictions, abuse of process and all those matters, surely they should be heard as soon as possible, which is why they were sent in advance, along with a witness statement. Have you seen the witness statement ...

B **JUDGE CROWTHER:** No.

**THE APPELLANT:** ... of the man standing in the doorway watching the incident?

**JUDGE CROWTHER:** No.

C **THE APPELLANT:** Well I served it on the court, so the prosecution have got it. It, it is a statement by the gentleman here sitting in the courtroom, Mr, Mr, or what his name is on the statement. He is the official designated McKenzie friend in this trial.

D **JUDGE CROWTHER:** So your McKenzie friend is a material witness, is he?

**THE APPELLANT:** Yes.

**JUDGE CROWTHER:** Yes, I see.

**THE APPELLANT:** And who set that up? They did. I had nothing to do with it.

E **JUDGE CROWTHER:** Right. What we are going to do ...

**THE APPELLANT:** To, to deliberately avoid me having the eyewitness.

F **JUDGE CROWTHER:** ... is adjourn now and at two o'clock we will continue to hear the evidence of the interview. I am going to ask you, Mr Smyth, to decide how best that can be adduced. The prosecution can adduce it either by the transcript or by the DVD, providing Mr Kirk has access to the DVD.

**MR SMYTH:** I know it was sent to him on 9<sup>th</sup> April.

G **JUDGE CROWTHER:** You choose how you adduce that interview and we will hear it at two o'clock.

**MR SMYTH:** Thank you.

H **JUDGE CROWTHER:** Thereafter, we will entertain any applications Mr Kirk wishes to make.

A **THE APPELLANT:** I wish to see the DVD.

**COURT CLERK:** Court rise.

**(A short adjournment)**

B **COURT CLERK:** Court rise.

**MR SMYTH:** Your Honour, my proposal is to play the DVD of the interview, but to make available to the court and of course Mr Kirk the summary ...

**JUDGE CROWTHER:** Yes.

C **MR SMYTH:** ... which I think is a pretty full transcript.

**JUDGE CROWTHER:** Yes.

**MR SMYTH:** But it brokers no argument about the accuracy of the summary if we play the DVD.

D **JUDGE CROWTHER:** All right. Let us get on.

**THE APPELLANT:** No. I am entitled to have a copy of the DVD.

E **JUDGE CROWTHER:** We are going to listen to it now, Mr Kirk. You can have a copy afterwards.

**THE APPELLANT:** Okay, so before the end of today this court has authorised that I, as the defendant, the appellant, can have a copy of the DVD, and I am not worried about the first interview, because I think I remember now it was something (inaudible), it was something irrelevant, and that I can leave this building with it, but I need the facilities to study it. Watching it now I am grateful for, but I should have had this nine months ago.

F **MR SMYTH:** It was sent to him on 9<sup>th</sup> April, as I reiterated earlier.

G **THE APPELLANT:** Yes, well I was locked up.

**JUDGE CROWTHER:** Thank you very much indeed. Yes, let us get on, Mr Smyth.

**MR SMYTH:** It is all loaded, so if my trusty assistant would not mind turning it on.

H **JUDGE CROWTHER:** Thank you.

**(DVD played to the court)**

73

A **MR SMYTH:** Sorry, my apologies, I think I have, we put in the wrong disc, I am sorry.

**JUDGE CROWTHER:** Well let us start with the other one.

**MR SMYTH:** My profound apologies, the disc has gone back to the CPS, the other disc has gone back to the CPS room.

B **JUDGE CROWTHER:** Right, well what we will do is we will rise, we will read the records of interview and we will treat that as the adduction of the interview. Mr Kirk has the DVD; he can see it at his leisure.

C **COURT CLERK:** Court rise.

**(A short adjournment)**

**COURT CLERK:** Court rise.

**THE APPELLANT:** Quite a lot of disclosure has occurred over lunch, your Honour.

D **JUDGE CROWTHER:** Well for the moment, Mr Kirk, Mr Smyth is that the prosecution case?

**MR SMYTH:** Your Honour, it is, yes.

**JUDGE CROWTHER:** Thank you very much indeed. Yes, Mr Kirk.

E **THE APPELLANT:** That is the prosecution case, but I have not seen the video.

**JUDGE CROWTHER:** No. The prosecution has chosen not to adduce that as part of its case.

**THE APPELLANT:** Well there is nothing, we have not heard any evidence yet. We have got Mr Rogan and it was even he suggested that I ... hang on, I am not talking until I have a witness. Where have they gone?

F **JUDGE CROWTHER:** Well the tape is running, but it is quite right that your McKenzie friend should be here.

G **THE APPELLANT:** So what is the change ...? I had in my hand my own phone that I used at the scene of the incident, recording the times and, and the phones calls that they have now admitted that I made inside the vehicle lock do not appear on this bill for O2. Now this is exactly what happened in the trial a few weeks ago, which fortunately the same barrister was dealing  
H with it, when I stood on the steps to the police station and I rang the court and the police saying,

A “What (inaudible), isn’t somebody going to sort out the change of date for the trial?” Do I go  
and see the doctor in Bristol because the court has ordered it, Her Ladyship did, and if I do that  
means the case will get adjourned and that will be another two months wasted, and, and  
B (inaudible). When we came to trial on that one, and he has just given me the printout, there is no  
evidence of a 999 call at all, and I said I rang three times and it has only got two on there. Now  
that looks to be in the same bundle that, that, that Mr Matthews has just handed me, and the one  
where you are concerned here is exactly the same day. They, they, I made two phone calls  
C outside the police station, outside the prison, and it is shown on the records, but when it, when it  
suits them they do not produce, and the time period is such that I allowed for them to arrive, but  
know the police will not, because they never do, because I asked for something, 22 years of this,  
D and this is the matter before His Honour Judge Seys Llewellyn, as I have said before. Sorry, if it  
is bit of a broken record, but it has destroyed my life and I have had 22 years of this. So, but  
when the door opened and I was inside, but on the police record, which I wish to serve on the  
court, I did not (inaudible), because I was not sure what the protocol was. I wanted to give  
E (inaudible) for you to see, and I would like you to have those now, before I say anything else.

**JUDGE CROWTHER:** Well ...

**THE APPELLANT:** You are refusing me? Right, I will carry on ...

**JUDGE CROWTHER:** No, I am going to explain the situation, Mr Kirk. The prosecution has  
F now closed its case. It has served all the evidence that it relies upon against you in this appeal.  
The time has now come where you could make a submission of no case to answer, if you so  
chose.

**THE APPELLANT:** No, it is an abuse of process. I make an application ...

**JUDGE CROWTHER:** Or that you can make any other application, and we will listen to them,  
of course. Or you can now go into the witness box and give your evidence.

**THE APPELLANT:** Well, when is the right moment to introduce an application for abuse of  
H process, now or after I have given evidence?

A **JUDGE CROWTHER:** I think the better course, given that we have heard evidence in this case, is that we should hear the totality of the evidence before we judge whether it would be impossible for you to have a fair trial or if it would be unfair for the trial to proceed. So you should give evidence at this stage, if you intend to. Now this morning, of course ...

B **THE APPELLANT:** Well, well hand on, what, what, what's the purpose of an abuse of process application ...

**JUDGE CROWTHER:** This morning, of course Mr Kirk ...

C **THE APPELLANT:** ... if I follow the route that you have introduced?

**JUDGE CROWTHER:** This morning, of course ...

**THE APPELLANT:** The whole purpose is that the prosecution should, was malicious and should not have been brought in the first place.

D **JUDGE CROWTHER:** This morning, of course Mr Kirk, I said that if you needed time before choosing to give evidence, we would give you time this afternoon and we would continue tomorrow, and I am offering you that opportunity again, and because I do not want you to say at any stage you were ill prepared.

E **THE APPELLANT:** Well, have you ... what? I have asked, I have said three law firms have been denied access to, to the prison. The, the lawyers acting at the previous hearing at the Magistrates' ... I am getting muddled up. No, sorry, he was (inaudible). Or was it the second one? Also I have established from my McKenzie friend that this barrister was not present at the Magistrates' Court and that the record that, that, that the (inaudible) from the prison, the police officer, that, clearly saying that no theft of a passport had taken place and therefore I was arrested. Well it is written on here, some words to that effect. This needs a (inaudible) before I can address you properly on points of law, on abuse of process, whether you should have recused yourself the last time, whether all sorts of issues ...

G **JUDGE CROWTHER:** You have made no application that I recuse myself, Mr Kirk.

H **THE APPELLANT:** And, and should I ... well, have you not read, received my letters?

A **JUDGE CROWTHER:** No. I told you this morning I have not received your letters.

**THE APPELLANT:** Well, is that my fault? I have done everything in my power as a prisoner.

**JUDGE CROWTHER:** But, Mr Kirk, I cannot guess at when somebody might want me to  
recuse myself, I have to listen to what they tell me and ask me to do.

B **THE APPELLANT:** I am not capable of relying on whatever I say in courtroom at my age,  
with my state of health. I have lost, my short memory is appalling now, absolutely none existent,  
but some days better than others. Which is why I have subjected it to writing, for judicial review  
C and other issues outside this court, for a later date. Far more important than this trial. That is  
why I, I have concocted the letters, or whatever the word you call it, the best I can, denied access  
to any law books within the prison, into typed form. And even when I have done that, they still  
D have not come to you. Now on this handwritten note purported to come from a clerk of the  
court, when I am told that I am alone (?), even at this last page, this is the date fixed for trial,  
ample time to prepare for trial. Are you saying that I have had ample time to prepare for this  
E case, the appeal, or do you accept that ... if, if you consider that if the conditions are as I have  
said, (inaudible) must have been far worse at the time in custody before the nameless district  
judge, this is not a matter for appeal, this case should be referred to judicial review and it should  
not be before (inaudible), or better still, you have the power to turn it back to the original  
F Magistrates' case and it should be a retrial. Just like you can give me bail this afternoon in order  
to get access to the hospital, get access to a lawyer ... I, I was admitted to the hospital on, on, in  
March and they said, "You must have anaesthetic, you must have a colonoscopy. Yes, you have  
G been operated on before." And it is all part of the, the jigsaw puzzle to make sure that their  
patients are looked after. The prison is run by three groups of people.

**JUDGE CROWTHER:** Are you going to give evidence this afternoon or would you like to do  
it tomorrow morning, or do you choose not to give evidence in your appeal?

H **THE APPELLANT:** I wish for disclosure. I am only here for disclosure. You are refusing me  
that disclosure and I need time to think about how else can I get the disclosure out of you.

A **JUDGE CROWTHER:** Well you have made a series of applications which I have rejected with reasons this morning, Mr Kirk, and I ...

**THE APPELLANT:** But you have just (inaudible).

B **JUDGE CROWTHER:** ... and I have heard nothing new since then.

**THE APPELLANT:** Well I have got them here in my hand. I offered them to you this morning. Six letters relating to this case. I have offered the, six of them ...

**JUDGE CROWTHER:** Well, Mr Kirk, I have rejected ...

C **THE APPELLANT:** ... (inaudible) them and you said (inaudible). Are you going to look, look, take them now off me or not?

D **JUDGE CROWTHER:** I have rejected your applications that you have made this morning for disclosure and I have rejected the applications you have made for issue of witness summonses as well.

**THE APPELLANT:** Yes.

E **JUDGE CROWTHER:** Now how are you going to proceed? Are you going to give evidence this afternoon, are you going to give evidence tomorrow, or do you not want to give evidence? Or do you want to consider that question tomorrow?

**THE APPELLANT:** My applications rest on whether you are entitled to give me bail or not.

F **JUDGE CROWTHER:** I am not.

**THE APPELLANT:** You are not? Well that, that is what we have been scratching our heads about.

**JUDGE CROWTHER:** Because I have not remanded you in custody, Mr Kirk.

G **THE APPELLANT:** But I have served the sentence for which I am currently in prison for, but I have not served the sentence for which I am here to appeal. If you choose to keep me in custody because you consider that is the way to do it, but I know some judges not far across the water, who, especially two I have in mind, would say, "Right, we have heard the evidence, what

H

A are we going to do with this, and let us (inaudible) come from above. This man must be given bail because he is entitled to bail.”

**JUDGE CROWTHER:** Mr Kirk, nothing ...

B **THE APPELLANT:** Am I entitled or not, yes or no?

**JUDGE CROWTHER:** Mr Kirk ...

**THE APPELLANT:** You will answer, will you?

**JUDGE CROWTHER:** Mr Kirk ...

C **THE APPELLANT:** I don't know, it's like a ...

**JUDGE CROWTHER:** There will come a time, Mr Kirk, if you simply rant, as you have been for the last five minutes, where we are going to rise to allow you to compose yourself. Now, the situation is, I have not remanded you in custody in this matter. I have not remanded you at all. You have, I have been told by Mr Smyth, served your sentence for this offence. That is a sentence you would have served back in December or thereabouts, or begun in December or thereabouts. You are currently serving a sentence imposed by Judge Rowlands. The only way that that sentence can be abrogated is an appeal to the Court of Appeal Criminal Division and their choosing to strike down Judge Rowlands' sentence. I have no power to release you on bail.

**THE APPELLANT:** Oh, so you mean that the fact they have kept me locked up for this since 14<sup>th</sup> October, the fact that I have served the sentence and now it is on appeal, had I not been locked up on remand, had I not been locked up and I was standing here, I would be allowed to go home and get my lawyers and, from across the bridge and wherever else, and get my legal papers, and come back this afternoon, over lunch, with the stuff I need? But because I am in custody you are not making it clear to me, because there must be some point of law which I know nothing about, because otherwise I am of the view that you have the power, subject to there being no other reasons from the police, that means the barrister today, because remember his trump card, he said his trump card? No, you said trump card.

H **JUDGE CROWTHER:** I said 'trump card' ...

A **THE APPELLANT:** Yes.

**JUDGE CROWTHER:** ... and the trump card is the fact you are serving the sentence of another court. Of this court, but differently constituted for an offence. I cannot release somebody on bail who is serving a prison sentence.

B **THE APPELLANT:** I have served it.

**JUDGE CROWTHER:** Well the prison say you have not, Mr Kirk.

**THE APPELLANT:** Well it is to do with when you decide it has started and when you ...

C **JUDGE CROWTHER:** No, it is not.

**THE APPELLANT:** You mean the prison decide?

**JUDGE CROWTHER:** Because if I say that I grant you bail, first of all that will not be a change in situation because you have not currently been remanded on bail or in custody on this appeal. If there were nothing else to keep you in jail other than the sentence you were serving and that expired, you would walk free. I have done nothing to your remand status and I do nothing to your remand status. Were there nothing else, you would be at liberty, but there is something else, there is a sentence being served, and I am not going to have any more submissions made about it. If the reality is that the prison say you have served that sentence, you will be released by them and without order from me, because I have no role in that decision. Mr Smyth, do you agree with my analysis of the situation?

D

E **MR SMYTH:** I do, and as I understand the position, he has never actually been remanded in respect of this matter at all.

F **JUDGE CROWTHER:** No.

G **MR SMYTH:** His detention in custody has derived from other matters for different reasons.

**JUDGE CROWTHER:** Yes. Mr Kirk, do you have any other submissions to make now?

**THE APPELLANT:** Yes, I wish to give you these written submissions. **(Handed)**

H **JUDGE CROWTHER:** Thank you. What are the points they are making?

A **THE APPELLANT:** Well I am afraid I would suggest you would need to read them in order to understand why they are written. I have been here before (inaudible).

**JUDGE CROWTHER:** Can there be a summary? Thank you.

B **THE APPELLANT:** I have copies, and I wish their Worships to see those.

**JUDGE CROWTHER:** Yes, they will, of course.

**THE APPELLANT:** Well ...

**JUDGE CROWTHER:** Are there copies here?

C **THE APPELLANT:** ... it does not always happen, does it? (inaudible) so confused. I apologise if I have to turn my back on you, only I have got to try and ... I know I have done copies, it is just that the (inaudible) and also I was not (inaudible). **(pause)**

**JUDGE CROWTHER:** Right, what is this application, Mr Kirk?

D **THE APPELLANT:** (inaudible) the copies.

**JUDGE CROWTHER:** It ends, "Does anarchy reign supreme here in South Wales?" But what is this application, 13<sup>th</sup> October, actually asking for?

E **THE APPELLANT:** Could we deal with the one addressed directly to you first, your Honour?

**JUDGE CROWTHER:** Yes, I see it. 'Application to lift PII Restrictions'. Yes.

**THE APPELLANT:** Have, have their Worships seen it?

**JUDGE CROWTHER:** I have not seen it yet.

F **THE APPELLANT:** I am afraid I have caused confusion, because the prosecution (inaudible) copies, and your Honour (inaudible).

**JUDGE CROWTHER:** No, no. **(pause)** Yes, well I will let my colleagues see that application.

G **THE APPELLANT:** **(pause)** Could, could I (inaudible) because that is going to take you five minutes to read all of them. There were six, I think, relevant to this court case, the remainder directed at other courts, but of course it is all to do with the evidence I have obtained this morning, and that is the way that South Wales Police, they actually refuse to investigate crime

H

A when it concerns (inaudible). And also may I refer to a laptop which contains the information  
(inaudible) make an application that you (inaudible).

**JUDGE CROWTHER:** Let me deal with this first.

B **THE APPELLANT:** I am sorry?

**JUDGE CROWTHER:** Let me deal with this first. Thank you, Mr Kirk. (pause) Now that  
you have handed me. So you know why I am not reading it, that is a copy of the clerks notes of  
the hearing in the Magistrates' Court.

C **THE APPELLANT:** Your Honour, if you look on page 7 of that, the full contents of page 7. It  
says that I had ample to prepare ... oh, I think I read it out, did I not, which is why I got muddled  
up with what you have got.

D **JUDGE CROWTHER:** If you choose to give evidence, of course you can refer to that during  
the course of your evidence ...

**THE APPELLANT:** (inaudible) but this is ...

**JUDGE CROWTHER:** ... but that is a matter for evidence rather than submissions, Mr Kirk.

E **THE APPELLANT:** ... it is in there stating, fourth line down, that the district judge had, was  
told that there was a video available. He said, (inaudible) page 7, fourth line down, I expect, fifth  
line, and it states that, that it will show on video, it will show on CCTV that I, I, well I put my  
F hand on the officer's shoulder. That has never been in dispute, but it is clear further indication  
that he, she had, he had been told, of course there was contact. Witnesses and ... no, sorry,  
CCTV, forget about the witnesses, there is CCTV in existence, which is why the one addressed  
to you directly is lifting PII restrictions.

G **JUDGE CROWTHER:** Well it is not clear whether the district judge was asking a ...

**THE APPELLANT:** Would you like a copy of the judicial review (inaudible) ...

**JUDGE CROWTHER:** Hold on. It is not clear whether the district judge was asking a  
H question or making a statement in there, and it is a matter for evidence in this case. We can only

A hear evidence once we have dealt with the legal applications you have put before us now. Thank  
you, thank you.

**THE APPELLANT:** (pause) Clerk of the court, is there any spares for my visitors, any  
B spares? I have just had a look through (inaudible), are there any spare left over. If you could just  
give everything, and a few more over here. There's two, (inaudible) somewhere.

### RULING

C **JUDGE CROWTHER:** Yes, in written submissions by a letter dated 12<sup>th</sup> October 2013, a  
letter dated 22<sup>nd</sup> June 2014, two letters dated 18<sup>th</sup> June 2013, Mr Maurice Kirk makes application  
for disclosure of various matters largely relating to a lengthy history of dispute between him and  
D the South Wales Police, as well as dispute between him and a psychiatrist and various other  
medical people. So far as the court has been made aware, no such material is in the possession,  
custody or control of the prosecution and question of stymied disclosure arises. No witness  
E summons has been issued in respect of other agencies, the police, that sort of thing, and on the  
face of the material before us, none of these applications would pass the test for the issue of a  
witness summons and that is materiality.

In such circumstances, any application for disclosure of this material, were it in the  
possession, custody or control of the prosecution, would fail, and accordingly these applications  
F are refused.

Thank you, Mr Kirk, what is next?

**THE APPELLANT:** Could I just, if you have any spare (inaudible) have them back,  
G (inaudible) because the only way of getting them to you is for you, is for you to travel from  
London (?) and me (inaudible) another (inaudible). I tried to post it, cannot get the email, the  
court denied receiving these letters, (inaudible) ...

**MALE SPEAKER:** Do you want these three back? Maurice, do you want these three sent  
H back to you?

A **THE APPELLANT:** I want a copy of each sent back, please (inaudible) have got.  
**MALE SPEAKER:** Yes, and then (inaudible) regular sources?  
**THE APPELLANT:** Oh, yes.  
**MALE SPEAKER:** Yes.

B **THE APPELLANT:** (inaudible)  
**MALE SPEAKER:** Yes.  
**THE APPELLANT:** Sorry, are you waiting for me?

C **JUDGE CROWTHER:** Yes, Mr Kirk. I have refused your applications for disclosure and, as you put it, to lift PII restrictions. What is next?  
**THE APPELLANT:** The other letters are addressed to you even though your name is not on them.

D **JUDGE CROWTHER:** Well I have dealt with all the matters you have just put up before me, Mr Kirk.  
**THE APPELLANT:** Well the Crown Court, they have got Cardiff Crown Court, they have got

E the case of, the case number, and because I have to write to six or seven courts at a time, I have to compose my very (inaudible) first place in order to keep the listening public and people in court rooms to realise that each sentence means something of importance, and I would not be

F putting the name, number of this court case on the top of those right hand corners in heavy type if I did not mean that the content is directly relevant to this appeal. I would ask that all three see those documents.  
**JUDGE CROWTHER:** We have all seen these documents, Mr Kirk, thank you.

G **THE APPELLANT:** Can you give me the total in number that you have referred to? I am afraid, sometimes, that I cannot keep up with, but I sent you, what was it, five? So ...  
**JUDGE CROWTHER:** Magistrates' notes that you ...

H **THE APPELLANT:** No.

A **JUDGE CROWTHER:** ... had not remembered having; a document headed 'BS614159',  
which is your prison number, is it not, and undated; a letter headed 'Abuse of process  
application', 20<sup>th</sup> June; a letter headed 'Position statement, unlawful use of MAPPA', 25<sup>th</sup> June;  
B 'Position statement, South Wales Police', 6<sup>th</sup> October; a letter addressed to me, 22<sup>nd</sup> June of this  
year; a letter dated, to the clerk of the court at Cardiff, 18<sup>th</sup> June; a letter to Mr Strinati, 18<sup>th</sup> June;  
a letter to the clerk to Cardiff Crown Court, 12<sup>th</sup> October; and the record of phone calls.

**THE APPELLANT:** In amongst that have you got the 12<sup>th</sup> October, please?

C **JUDGE CROWTHER:** Yes, I have that.

**THE APPELLANT:** Thank you. And could you just (inaudible), I cannot remember, just the  
total number of letters? Actually, was it six, seven, eight?

D **JUDGE CROWTHER:** I did not count them, Mr Kirk, I am afraid.

**THE APPELLANT:** Well, yes, well you see I, I cannot memorise anything. I have got to be  
able to get back to my cell and look for a total number of letters, and if I could, if I could just  
have the total that I have officially served on this court?

E **JUDGE CROWTHER:** Well I do not know what 'officially served' means. I am simply  
telling you ...

**THE APPELLANT:** I have just handed them to you. What else can I do?

F **JUDGE CROWTHER:** I am simply telling you what I have got in front of me.

**THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** I am simply telling you what I have got in front of me. Shall I count  
them for you?

G **THE APPELLANT:** Thank you very much.

**JUDGE CROWTHER:** One, two, three, four, five, six, seven, eight, and the notes of evidence.

**THE APPELLANT:** Thank you, your Honour.

H **JUDGE CROWTHER:** Sian, did you have some information?

A **COURT CLERK:** Yes, your Honour. I have talked to the prison and they have got the earliest release date for Mr Kirk of 27<sup>th</sup> July.

**JUDGE CROWTHER:** Thank you very much indeed. Mr Kirk, the prison has indicated that the earliest date of release for you is 27<sup>th</sup> July. I hope that is information you have wanted.

B **THE APPELLANT:** Yes, but, but, well, well no one will explain to me how that (inaudible).

**JUDGE CROWTHER:** It is not a matter for me, Mr Kirk, it is a matter for the prison, and we must proceed with this case. Now if you need time to consider your position and what you are going to do next, I will give you that time, but if you do not need time we are going to carry on now.

C **THE APPELLANT:** (pause) I, I have lost a document, unless you have got it. That is the evidence concerning the police phone calls, which were at the heart of the matter in the last court.

D **JUDGE CROWTHER:** Well I have refused your application for disclosure of those, amongst other things.

E **THE APPELLANT:** Right, (inaudible). So what do you want me to think about now?

**JUDGE CROWTHER:** I want you to think about, 1) are you going to give evidence or not? 2) if you are going to, are you content to do it this afternoon, or would you prefer until tomorrow morning to collect your thoughts?

F **THE APPELLANT:** Well I gave you one by mistake, but at least I have got one of them here, and this is one I wrote on the back of, part of the court's notes, and I thought things that arose this, this morning was that the need for the exhibits in the lower court, so can we have those please?

G **JUDGE CROWTHER:** What exhibits, Mr Kirk?

**THE APPELLANT:** (inaudible).

**JUDGE CROWTHER:** You had those at the last hearing, surely?

H **THE APPELLANT:** Well, I am in prison.

A **JUDGE CROWTHER:** Yes, you took them away with you, as I recall.

**THE APPELLANT:** Yes, but I, I, I did not, I was in custody. I was arrested, I was, I have been  
down (inaudible) whilst in prison. I want a certified true copy of, of what was before the court,  
B in the lower court. Because each time I say this at the higher court, in the last two jury trials ...  
do you know what the last judge, he actually, the police confiscated them. This gentleman here  
can give evidence on oath, Mr Matthews, that when my sister, a retired magistrate, and Mr  
Matthews, went to the Crown Court office during my trial on 17<sup>th</sup> March, they said, "We have  
C not got the exhibits of the, of the previous cases relating to this, because they have been  
confiscated by the police."

**JUDGE CROWTHER:** Mr Kirk, it is time to decide whether ...

D **THE APPELLANT:** That does not interest you, then?

**JUDGE CROWTHER:** ... you are going to give evidence or not? That is not the time for that  
submission to be made?

**THE APPELLANT:** When is it?

E **JUDGE CROWTHER:** I have told you I will hear any application for abuse of process at the  
conclusion of the evidence. Now are you going to give evidence this afternoon or do you want  
time to collect your thoughts and give evidence tomorrow morning, or choose not to give  
evidence? It is entirely a matter for you, but it is a decision that must be made now, please.

F **THE APPELLANT:** But, but my application for abuse of process was based on the evidence  
you have heard this morning and the conduct leading up to the, the closing of their case. Now  
you are refusing to let me have the court exhibits (inaudible), it is an extra thing that needs space  
G on the bottom of a letter to add to that (inaudible).

**JUDGE CROWTHER:** Mr Kirk, you have had everything to which you are entitled to in the  
course of this appeal ...

H **THE APPELLANT:** So I am not entitled to the ...

**JUDGE CROWTHER:** ... both in the earlier hearing and now ...

A **THE APPELLANT:** So I am not entitled ...

**JUDGE CROWTHER:** ... and I have refused applications for further disclosure of unused material.

B **THE APPELLANT:** No, it was used, it is evidence in court for the magistrates to convict(?), and it was a plan of the site, and I said, well instead, can we have a (inaudible), as we say in my village in Brittany, because there was no video, and there was no photographs, and there were no witnesses.

C **JUDGE CROWTHER:** We saw many photographs at the last appeal which showed television cameras. We understand that that is an important point of your submission, that there must have been active CCTV.

D **THE APPELLANT:** You saw photographs? (inaudible) ...

**JUDGE CROWTHER:** Yes. So did you.

**THE APPELLANT:** Hang on.

**JUDGE CROWTHER:** We were all there, were we not, Mr Smyth?

E **MR SMYTH:** Yes.

**JUDGE CROWTHER:** Yes.

**MR SMYTH:** In fact, I am just checking through the various exhibits, but there is a photograph of the prison and also there are photographs put in by ...

F **THE APPELLANT:** (inaudible) ...

**MR SMYTH:** ... Mr Kirk of Mr Matthews.

**JUDGE CROWTHER:** Yes.

G **THE APPELLANT:** ... see them, let us seen them. I am sorry, I do remember something about it, but I cannot ...

**JUDGE CROWTHER:** Mr Kirk ...

H **THE APPELLANT:** It was the front of building (inaudible), it was the front of the building.

**JUDGE CROWTHER:** Yes, Mr Kirk ...

A **THE APPELLANT:** But their case is that it was inside the building.

**JUDGE CROWTHER:** ... you will now have to decide whether you are going to give evidence or not, and if yes, whether you are going to do it now or tomorrow morning?

B **THE APPELLANT:** So you are refusing me the plans that was used in the lower court ...

**JUDGE CROWTHER:** I have told you what is happening now, Mr Kirk.

**THE APPELLANT:** ... and the only witness who marked on it where the cameras were, and in those notes that have now been released by the prosecution, for which I am grateful, he said there was no record of any of the cameras. If you read it, in there at about page two or three.

C **JUDGE CROWTHER:** Mr Kirk, it is time for you to decide.

**THE APPELLANT:** Exhibits of Magistrates', (inaudible), you will not allow, one of you or some of you to produce photographs of inside, you see no photographs of inside the vehicle lock, because there was no concrete block. He said, when I said, "Well who opened the door? Who was it? Was it Mr Reid or Mr Thomas? Is it ..."

D **JUDGE CROWTHER:** Mr Kirk, this is very interesting, and if necessary you can give evidence about it.

E **THE APPELLANT:** No.

**JUDGE CROWTHER:** That is the right way to make these points.

F **THE APPELLANT:** The evidence had already been given and it can be cleared up by a plan or a photograph (inaudible).

**JUDGE CROWTHER:** Well no, Mr Kirk, while it has been given, your points have not been evidenced. You need to go in the witness box to make these points ...

G **THE APPELLANT:** Ah, so ...

**JUDGE CROWTHER:** ... and then we will resolve, if there is a dispute between you and the prosecution witnesses, where the truth lies. That is the way the system works, Mr Kirk.

H **THE APPELLANT:** The concrete pillar.

A **JUDGE CROWTHER:** Now, do you want to proceed now or do you want time to consider your position?

**THE APPELLANT:** Mr Rogan said ...

B **JUDGE CROWTHER:** Now do you want time to consider your position ...

**THE APPELLANT:** No.

**JUDGE CROWTHER:** ... or do you want to proceed now?

**THE APPELLANT:** I want proper disclosure.

C **JUDGE CROWTHER:** I have refused your applications for disclosure. The time has come now, first of all where you have to decide, are we proceeding now, or do you want time to prepare yourself?

D **THE APPELLANT:** What can you do about letting me get legal representation?

**JUDGE CROWTHER:** Mr Kirk, I am not going to accept this sort of deliberate wasting of time. I have said to you again and again this afternoon, the time has come for you to decide whether you proceed now or whether you want time to consider your position. I am prepared to adjourn this case until tomorrow morning for you to have time to think, because I am aware there is a burden on somebody representing themselves that is not present when somebody is represented. Now that brings me to the point you have made about representation. This is a case in which you have representation and you have dispensed with that representation. Have you engaged ...

E **THE APPELLANT:** Had, what, I did what, when?

**JUDGE CROWTHER:** Have you engaged a lawyer to act for you?

G **THE APPELLANT:** When?

**JUDGE CROWTHER:** Have you engaged a lawyer to act for you?

**THE APPELLANT:** Yes.

H **JUDGE CROWTHER:** Where are they?

A **THE APPELLANT:** Oh, dream on, dream on. He tried to get access in November. I then got  
another set of lawyers across the bridge and they could not get in. And then I phoned lawyer in,  
not so far from, from Cardiff, and he gave up trying to make an appointment on the phone. He  
B said, "It's just impossible," he said, he said, "I just can't, can't, they will not deal with it." It is  
all on record. It is all, (inaudible) believe a word I have just said.

**JUDGE CROWTHER:** No I am not going to ...

**THE APPELLANT:** It is all on record.

C **JUDGE CROWTHER:** I am not going to force you into the witness box this afternoon. It is  
entirely up to you whether you give evidence or not, but I am going to adjourn this case now  
until half past ten in the morning, and at half past ten ...

D **THE APPELLANT:** Well that is an abuse.

**JUDGE CROWTHER:** No, adjournment is entirely a discretionary matter in the hands of the  
judge and I am exercising my discretion to adjourn so that you may consider your position and  
make the decision whether to give evidence or not in the morning.

E **THE APPELLANT:** Ah, I see.

**JUDGE CROWTHER:** At half past ten tomorrow you will either give evidence or you will  
not; it is entirely a matter for you.

F **THE APPELLANT:** You have an appointment with another case for three o'clock and you are  
running late. I find it despicable. Therefore, I do not get my disclosure.

**JUDGE CROWTHER:** Would you show Mr Kirk a copy of the daily list, please? Mr Kirk, I  
am having you passed another document.

G **THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** I am having you passed a document. It shows the obligations of this  
court today. You have our sole attention, as you can see.

H **THE APPELLANT:** I think it would be too dangerous for me to comment on that, your  
Honour, (inaudible). I am most grateful for a copy of this. Thank you. And can you make sure

A that I can see my McKenzie friend without delay, please, because the matters that have arisen now are, were unforeseen, even for me in Wales, sorry, in South Wales. If I had been allowed to be transferred outside the area, prison and court, this case would not have gone this far.

B **JUDGE CROWTHER:** There we are. Well if Mr Kirk could see his McKenzie friend as he has done before, I would be grateful to you; though of course that is subject to the ordinary demands of getting him back to Cardiff, I understand that.

**MALE SPEAKER:** I understand, your Honour, there is a bus going now.

C **JUDGE CROWTHER:** Well that is ...

**THE APPELLANT:** Tough. It can bloody well wait.

**JUDGE CROWTHER:** ... that is entirely a matter for the custodial services.

D **THE APPELLANT:** So you are now denying me the right to see ...?

**JUDGE CROWTHER:** Though, if he cannot see his McKenzie friend today, he should not be brought at 25 past ten tomorrow, but early so that he can have some ...

**THE APPELLANT:** No.

E **JUDGE CROWTHER:** ... time with him.

**THE APPELLANT:** They (inaudible) that this case was finishing at three o'clock and you are running late.

F **JUDGE CROWTHER:** Is that the only bus going?

**THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** Is that the only bus going?

**THE APPELLANT:** And also, where is the CD? You promised me that DVD ...

G **MALE SPEAKER:** (inaudible) one later.

**THE APPELLANT:** ... before the end of today. You promised me a DVD and managed to wriggle out of it, because he played the wrong tape, to show how I never get these DVDs.

H **JUDGE CROWTHER:** He has got the DVD, the 24<sup>th</sup> April he had the DVD, did he not?

**THE APPELLANT:** He has got one. Why can I not have his?

A **MR SMYTH:** The 9<sup>th</sup> of April copies of those were sent.

**JUDGE CROWTHER:** The 9<sup>th</sup> April he had the DVD. You had it on 9<sup>th</sup> April.

**THE APPELLANT:** I do not have it, it has been removed from me if ever I had it. On the 9<sup>th</sup>  
B of which month? April? Well I was in prison. Well perhaps it (inaudible), perhaps it ... 9<sup>th</sup>  
April. Can I have the date, please?

**JUDGE CROWTHER:** Mr Smyth told us it was 9<sup>th</sup> April.

**MR SMYTH:** I have seen a letter from the CPS addressed to Mr Kirk at the prison.

C **THE APPELLANT:** Well I have been in custody continuously.

**MR SMYTH:** Well it was sent to the prison.

**THE APPELLANT:** So where was I given it, in court? In court?

**JUDGE CROWTHER:** Hold on a moment, Mr Kirk. Have a sit down for a moment.

D **THE APPELLANT:** (inaudible)

**JUDGE CROWTHER:** If we could accommodate him this afternoon, I would be very  
grateful.

E **MALE SPEAKER:** There is a van that is going now. If he wants ...

**THE APPELLANT:** No.

**JUDGE CROWTHER:** Hold on, Mr Kirk.

**MALE SPEAKER:** If he wants to go on that, he can go now. Otherwise, he would have to  
F wait around.

**JUDGE CROWTHER:** Fine. Well I think, Mr Kirk, you would prefer to wait so you can use  
the time with your McKenzie friend, would you not?

G **THE APPELLANT:** With the DVD.

**JUDGE CROWTHER:** Would you prefer to wait and to have the time with your McKenzie  
friend?

H **THE APPELLANT:** I wish to see the DVD. You have cleverly blocked it. I (inaudible) to see  
it in my deliberations overnight.

A **MR SMYTH:** The answer is, if your Honour would like to retire, I will play it in court now to him.

**JUDGE CROWTHER:** Thank you very much, that is very kind.

B **THE APPELLANT:** Sorry, what was that?

**JUDGE CROWTHER:** Mr Smyth will see that the DVD is played in court.

**THE APPELLANT:** No. I want the one he has got, the one he has got ...

**JUDGE CROWTHER:** That is what you will have.

C **THE APPELLANT:** ... and I go back to the cells and the prison will let me see it.

**JUDGE CROWTHER:** No, that is what you will have. That is the way we are going to do it.

If Mr Kirk does not choose to avail himself of that ...

D **THE APPELLANT:** No, this is the end of the case.

**JUDGE CROWTHER:** ... that is entirely a matter for him.

**THE APPELLANT:** This is, this, this ...

**JUDGE CROWTHER:** I am very grateful to the custody for waiting.

E **THE APPELLANT:** This is for private use. Their case is closed.

**JUDGE CROWTHER:** Thank you very much indeed. Half past ten for this case.

**COURT CLERK:** Court rise.

**(3.09pm)**

F **(The court adjourned until 10.30am on Tuesday, 1<sup>st</sup> July 2014)**

G \_\_\_\_\_

H

**ALL PROCEEDINGS**

(10.33am)

**JUDGE CROWTHER:** Good morning. Yes, well Mr Smyth and Mr Kirk, I should tell you both that the court is not able, for various reasons, to sit beyond three o'clock or thereabouts today, but we can certainly make progress until then.

**MR SMYTH:** I wonder, your Honour, that I might raise one matter ...

**JUDGE CROWTHER:** Yes, please.

**MR SMYTH:** ... before your Honour asks Mr Kirk what he proposes to do. I indicated to Mr Matthews, his McKenzie friend, that overnight I had the opportunity to listening to a recording which I have obtained of his telephone call from the vehicle lock to the police, after the incident.

**JUDGE CROWTHER:** Yes.

**MR SMYTH:** I has actually asked for this some time back and when I came to court yesterday I found these on the file and I only had the opportunity of listening to them overnight.

**JUDGE CROWTHER:** Yes.

**MR SMYTH:** So I thought I ought to listen to them first. I was not even sure, I have got three copies, I was not sure whether they were the same, but they are in fact the same. I have checked it plays in the system. I do not rely upon it as part of the prosecution case, but I have indicated to Mr Matthews and obviously now to Mr Kirk that it exists. It is very short. I do not know whether he wants to listen to it before proceeding further. It could be easily played in court in the absence of other people. Or whether he is simply content to continue in the knowledge that it exists.

**JUDGE CROWTHER:** Yes, well what do you want to do, Mr Kirk? Do you want to play that as part of your case? Would like us simply to listen to it now?

**THE APPELLANT:** I would have thought you can guess, your Honour. Of course I need possession of it.

A **JUDGE CROWTHER:** Well, there it is.

**THE APPELLANT:** Well am I going to get possession of it? (inaudible) a copy for me as well?

B **JUDGE CROWTHER:** You have a copy through your McKenzie friend, Mr Kirk.

**THE APPELLANT:** You will not let me have his notes he took yesterday?

**JUDGE CROWTHER:** I have not been asked, Mr Kirk.

**THE APPELLANT:** Well I cannot get them when I (inaudible), I was expecting to get them

C whilst in custody downstairs when he came to see me, but we have to talk through bullet proof glass.

**JUDGE CROWTHER:** Yes. People who are not accredited legal advisors have to visit in that

D way. It seems to me that you are entitled to see the notes that were taken on your behalf yesterday and they can be handed to Mr Kirk, can they not, providing through you, through the custody staff?

**MALE SPEAKER:** Yes, your Honour.

E **JUDGE CROWTHER:** Yes, thank you very much indeed.

**THE APPELLANT:** Not to see them, keep them. Do I understand that I am being allowed to keep them?

**JUDGE CROWTHER:** On the basis that those are papers for the conduct of his defence, I

F assume the answer to that is yes, gentlemen?

**THE APPELLANT:** Thank you, your Honour.

**JUDGE CROWTHER:** Yes, thank you. Now, Mr Kirk, the time has come at which you must

G decide whether you are going to give evidence or not?

**THE APPELLANT:** This cooperation, which I am most grateful for, from the Bristol barrister, leads me to remind the court that I would like to be in possession of the video their Worships have seen and I have never seen before, and therefore it is evidence for the prosecution.

H **JUDGE CROWTHER:** What video is this, Mr Kirk?

A **THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** What video is this, please?

**THE APPELLANT:** Did we not see something yesterday?

B **MALE SPEAKER:** (inaudible) the police interview.

**THE APPELLANT:** Was the bench sitting? I cannot remember. Was it shown to ...

**MALE SPEAKER:** Mr Smyth offered to play it to you afterwards.

**THE APPELLANT:** Oh, I am sorry, your Honour, apparently it was shown ...

C **MALE SPEAKER:** We did not actually see it ...

**THE APPELLANT:** No.

**MALE SPEAKER:** ... because he ...

D **THE APPELLANT:** Oh, apologised and went out the door to get the, another CD. So, so, your Honour, you were not sitting then. (inaudible)

**JUDGE CROWTHER:** No, Mr Kirk, what happened was, the prosecution chose in fact to adduce the interview through the summary, which is a matter for them. At the ...

E **THE APPELLANT:** (inaudible)

**JUDGE CROWTHER:** Hold on. At the end of the day, Mr Smyth offered to play for you the DVD that you had not seen of your interview, and I assume that was done, was it?

F **MR SMYTH:** In fact, Mr Kirk, after a short discussion with those assisting him, left the dock and did not avail himself of the opportunity.

**JUDGE CROWTHER:** Yes. Well in those circumstances, I am not going to give any more time for that to be done, if that facility has been offered and rejected. Now is the time, Mr Kirk,

G you must decide whether to give evidence or not.

**THE APPELLANT:** I have never been offered possession of that CD. Did you hear me?

**JUDGE CROWTHER:** Yes I did, Mr Kirk. I am not going to adjourn.

H **THE APPELLANT:** Right, yes. My hearing is, is fantastic, because I now have been fitted a hearing aid a few days ago, and my friends in the court have said, "We notice you do not shout,

A raise your voice to, to much nowadays.” It is because in the old days I had to shout in order to  
hear myself and listen to myself. So we have got some progress there, your Honour. So do we  
leave it then, that you are not going to let me have possession of the custody video interview that  
was made under caution?

B **JUDGE CROWTHER:** Mr Kirk, I am not going to adjourn the case for you to see that video  
...

**THE APPELLANT:** I did not ask for an adjournment.

C **JUDGE CROWTHER:** ... given that you were offered that facility yesterday and rejected.  
The time has now come ...

**THE APPELLANT:** I did not ask for an adjournment. I want possession of something to  
which I am entitled under Article 6 of the European Courts of Human Rights.

D **JUDGE CROWTHER:** The time has now come, Mr Kirk, for you to decide whether to give  
evidence or not.

E **THE APPELLANT:** Well, there is no doubt in my mind that I see no point in giving evidence  
unless I can have possession of the CD that was shown to the court yesterday.

**JUDGE CROWTHER:** So you call no evidence do you, Mr Kirk?

F **THE APPELLANT:** No. All you have to do is to, is to, no delay to these proceedings, no  
delay to these proceedings, to give me the assurance that the people in the gallery will have a  
copy before the end of today’s play, before the stumps are drawn.

**JUDGE CROWTHER:** Now, Mr Smyth, you told us yesterday the date in April when Mr Kirk  
was given that DVD. What was the date?

G **MR SMYTH:** 9<sup>th</sup> April.

**THE APPELLANT:** The 9<sup>th</sup>.

**JUDGE CROWTHER:** 9<sup>th</sup> April. Thank you very much indeed. Yes.

**MR SMYTH:** I have here a copy of the letter, if it is of assistance.

H **JUDGE CROWTHER:** No, thank you very much, we accept what you tell us.

A **THE APPELLANT:** Your Honour, I am in custody. I have said at the beginning of the trial, in April that the prison, despite the assurances to His Honour Judge Seys Llewellyn QC, I am being denied the facilities in the prison to view DVDs, and if I was legally represented ...

B **JUDGE CROWTHER:** Mr Kirk, I have given my ruling on the DVD. I now have to say something formal to you. I would be obliged if you would hear me out. You have heard the evidence against you. Now is the time for you to make your defence. You may give evidence on oath and be cross-examined like any other witness. If you do not give evidence, or, having  
C been sworn, without good cause refuse to answer any question, that the court may draw such inferences as appear proper. That means we may choose to hold it against you. You may also call any witnesses whom you have arranged to attend court or to lead any agreed evidence. Afterwards, you may also, if you wish, address us, but you cannot at that stage give evidence.  
D Do you now intend to give evidence?

**THE APPELLANT:** Could I have a copy of the certificate of conviction and exhibits that are with this court?

E **JUDGE CROWTHER:** No, Mr Kirk, I am not at this stage going to answer requests for disclosure. I have asked you whether you are giving evidence or not and I have given you the warning that I am required to do as to the consequences if you choose not to give evidence. You must answer that question, please.

F **THE APPELLANT:** Your Honour, I have been down this road a number of time in Cardiff Court. I did not expect to get it in such an always amicable situation that I have had the pleasure of visiting Newport Crown Court building. I believe you have a legal duty to produce proof to  
G yourself that there is a certificate of conviction, and that I have been entitled, as somebody incarcerated by the South Wales Police, to have a copy of that document, and I also know, but I am not sure, that I am entitled to have a copy of the exhibits that were used in the lower court, and that I have been assured time and time and time again that the exhibits in the 1<sup>st</sup> December  
H 2011 harassment due to falsified medical records by the South Wales Police, those exhibits are

A not to be released to me, and that the Magistrates' Court, despite judicial review applications  
throughout the winter of 12.13, those exhibits were refused me by Cardiff Crown Court and  
Magistrates' Court. I do believe, with respect, your Honour, that somewhere down the line I  
B have not got it completely wrong, and I am going to be in further difficulties, with the view of  
giving evidence without those, that information, and the fact that my lawyers in Bristol, over a  
year ago, no, under a year ago, said that owing to my court hearing in March of last year, I was  
highly likely to be eligible for Legal Aid. Legal Aid. And documents were filled in and the  
C gentleman in the public gallery will confirm that he was very much instrumental for this,  
travelling backwards and forwards, and so on and so on, and they wanted the telephone number,  
the registration number of a car of great value, a (inaudible) speed model Peugeot, a one off  
D thing, priceless, and their argument for not completing the Legal Aid was that they, I had not  
identified the car registration in order for them to value it. Now that case has also been  
deliberately delayed and delayed and delayed, because they want me for drunk drive, curb  
crawling in Rumney, to be registered as a sex offender, all sorts of things, which just happen to  
E be important to me and my family, but there, you are (inaudible) ...

**JUDGE CROWTHER:** Are you going to give evidence in this case, Mr Kirk?

**THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** Are you going to give evidence in this case?

**THE APPELLANT:** I wish for an adjournment for legal, to seek legal representation.

**JUDGE CROWTHER:** Mr Kirk, you have chosen to proceed in this case without  
representation, have you not?

**THE APPELLANT:** I told you, I cannot get legal representation. I wish to withdraw this  
G appeal. What is the word? Drop it?

**JUDGE CROWTHER:** Yes.

**THE APPELLANT:** Subject to a list of conditions in front of me.

**JUDGE CROWTHER:** Well I am not prepared to accept conditions, Mr Kirk.

A **THE APPELLANT:** Because I will not be able to get at a lawyer until I am released from prison, when you have given it to me in writing, at last, what my current calculated Cardiff cabal's decision on when I am eventually to leave Cardiff Prison. And I think you said, was it 27<sup>th</sup> July?

B **JUDGE CROWTHER:** Mr Kirk, are you seriously telling me that you are withdrawing ...

**THE APPELLANT:** Are you suggesting I am standing here ...

**JUDGE CROWTHER:** ... your appeal against the conviction?

C **THE APPELLANT:** ... not being serious?

**JUDGE CROWTHER:** Are you seriously telling me ...

**THE APPELLANT:** With respect.

D **JUDGE CROWTHER:** ... you are withdrawing your appeal against conviction, or seeking our leave to do so, after three days?

**THE APPELLANT:** I am serious.

E **JUDGE CROWTHER:** And if you withdraw your appeal against conviction, do you pursue your appeal against the sentence? So there are two questions there: 1) are you withdrawing your appeal against conviction?

**THE APPELLANT:** Conditionally.

**JUDGE CROWTHER:** You cannot do so, Mr Kirk.

F **THE APPELLANT:** Sorry?

**JUDGE CROWTHER:** You need our leave to withdraw and we refuse to entertain any conditions. Are you or are you not withdrawing your appeal or seeking our leave to do so?

G **THE APPELLANT:** Sorry, you divided it. Did you say 'refuse' for the first half or all of it?

**JUDGE CROWTHER:** I have not refused anything. I want to know what you are asking, Mr Kirk.

H **THE APPELLANT:** I said conditionally, I wish to withdraw ...

**JUDGE CROWTHER:** And we are not going to entertain any conditions.

A **THE APPELLANT:** All right then, I wish for it to be adjourned until I am freed on 25<sup>th</sup> July.

**JUDGE CROWTHER:** Yes, well we will consider that.

**THE APPELLANT:** Now you have just adjourned it ...

**JUDGE CROWTHER:** We will consider that.

B

**THE APPELLANT:** ... three months for your convenience. (pause)

### RULING

C **JUDGE CROWTHER:** No, the court is not going to adjourn this appeal. This appeal is ready to proceed and the case is not going to be adjourned.

**THE APPELLANT:** Can I have five minutes with my McKenzie friend?

D

**JUDGE CROWTHER:** Yes. Let me set out the situation so that everybody hears it. When an appeal is ongoing, it can be withdrawn with the leave of the court. That is right, Mr Smyth, is it not?

**MR SMYTH:** Yes. I am just looking at the relevant section and rules, yes.

E

**JUDGE CROWTHER:** Thank you. Were you to seek leave to withdraw this appeal, I see no reason why we would not, on the face of it, allow you to withdraw the appeal against conviction. You may want us to continue to consider your appeal against sentence, but I can offer you no comfort or indication as to what our view might be. That is your position, Mr Kirk, and those are your options. We will come back in ...

F

**THE APPELLANT:** Your Honour, I wish to serve this on the prosecution.

**JUDGE CROWTHER:** Well you can do that when we have ...

G

**THE APPELLANT:** (inaudible) ...

**JUDGE CROWTHER:** You can do that when we have risen.

**THE APPELLANT:** ... prisoner escort record.

H

**JUDGE CROWTHER:** We will come back in at five past 11. Thank you.

**COURT CLERK:** The court will rise.

(A short adjournment)

**COURT CLERK:** Court, please rise.

**JUDGE CROWTHER:** Yes, Mr Kirk.

**THE APPELLANT:** Your Honour, I took the opportunity to have the chance to think, and I was able to give, tendered to the prosecution a copy of a blank prisoner escort record, a document which travels with the prisoner between (inaudible), and the prison, and to the courts, and stays with the body until it is used for when he goes back to court or goes to another prison, etcetera. Mr Smyth knows very well now, because (inaudible), that the records relating to this case and the case of 1<sup>st</sup> December 2011, the harassment conviction to do with the medical records, are at the heart of the work, my success in finally getting justice. I would ask that in the light of the fact that Mr Smyth has come to this case, as before, ill-informed for reasons of nefarious conduct by the South Wales Police, that is my humble submission. He is now in a position to consider his position as an officer of the court as to whether to proceed with this case. He may not be, because he is still devoid of vital information, mainly my MAPPA status at this moment, and the clerk of the court in your absence kindly assisted me in saying that of course it would be nothing to do with the clerk of this court, to save this court's time. I have asked the custody people now and they are obliged under the security of country, thank goodness, not to divulge those sort of matters. On the front of that prisoner escort record document, had I submitted the following page, which I have not, they wrote on similar, such things as, "This man is not to be released, irrespective of the judge giving him bail," and of course this relates to MAPPA related issues.

**JUDGE CROWTHER:** Mr Kirk, I said to you yesterday, I have not remanded you in custody or on bail.

**THE APPELLANT:** No, I know that. Well I did not know, but thank you for reminding me, your Honour. That is not the issue. I have had difficulties in proceeding this case, in giving evidence, a) because my dear friends overlooked, they had a late night on a good Burgundy, in

A bringing the transcript of the Governor Rowe on the 7<sup>th</sup> and 8<sup>th</sup> April, which you were present at,  
because she was lightly cross-examined by me on issues relevant to this case. I have purchased  
that transcript along with £10,000 worth of other transcripts, whilst I have had to resign as a  
B veterinary surgeon, and after retirement, forced retirement (inaudible) South Wales Police, and I  
am anxious to refer to that transcript in my evidence. We have a copy somewhere, but the prison  
would not let me photocopy mine, so I sent it out, and of course I no longer have on, and I did  
give my friends notice to this, but they have been a little (inaudible). So could you possibly  
C adjourn until two o'clock?

**JUDGE CROWTHER:** No, we are not going to adjourn until two o'clock, Mr Kirk.

**THE APPELLANT:** No? Oh, okay.

**JUDGE CROWTHER:** We have had, I think you told me yesterday, 80 days since the last  
D hearing. It is regrettable that that was the necessary delay and I apologised for it at the time that  
this fresh date was fixed. It seems to me, and I think probably seems to us, that you can give  
your evidence without reference to that transcript, because we have each made a note of  
E Governor Rowe said and her evidence will therefore be fresh in our respective memories. Do  
you choose to give evidence, Mr Kirk?

**THE APPELLANT:** Your Honour, the case relating to her, the Recorder, Her Honour Eleri  
F Rees, indicated to the court that the arrest of the Crown prosecutor, the case that has now been  
transferred to Bristol, was to be heard before this case. Now apparently I have been, this case  
has been delayed for 80 days, but I have now just been notified yesterday ...

**JUDGE CROWTHER:** Now Mr Kirk, it was I who dealt the transfer to Bristol and I gave no  
G directions about which should be heard first.

**THE APPELLANT:** Yes, well ...

**JUDGE CROWTHER:** Judge Rees, I think, has not had any involvement with this case  
subsequent to mine, within Cardiff, although I know that another judge has dealt with the case in  
H Bristol.

A **THE APPELLANT:** Well, well ...

**JUDGE CROWTHER:** That is right, Mr Smyth, is it not?

**MR SMYTH:** Yes, that is correct.

B **THE APPELLANT:** ... if I may assist your Honour, the case that Her Ladyship was dealing with was T20130801, which was deliberately set up to keep me in custody over winter and was then switched on the day, dropped and switched for the jury trial for 17<sup>th</sup> March. Now you have reminded me, thank you, that I wish to have £10,000 on account towards my helpers here, because I have had witnesses travelling ...

C **JUDGE CROWTHER:** Mr Kirk, a McKenzie friend can certainly not be paid from the public purse and should not accept funds at all for what they do. If they do so, they commit an offence against the Courts and Legal Services Act. Now ...

D **THE APPELLANT:** The, this evening, the evening ...

**JUDGE CROWTHER:** ... I need an answer to this question, Mr Kirk. Are you going to give evidence on your own account?

E **THE APPELLANT:** Is my McKenzie friend entitled to give evidence?

**JUDGE CROWTHER:** If you call a witness, that must be done either after you give evidence or instead, because a defendant or appellant must give evidence first.

F **THE APPELLANT:** (inaudible) a, a witness is anybody's property. He must be both compatible, compellable and competent. My question was specific, and it was unambiguous. Does my McKenzie friend have the right to give evidence?

**JUDGE CROWTHER:** You can call any witness who can give relevant evidence, Mr Kirk.

G **THE APPELLANT:** I would be grateful for an answer, yes or no, your Honour, with the utmost respect.

H **JUDGE CROWTHER:** I am not going to be dictated to, Mr Kirk, because not all questions can be answered yes or no. The answer is that you call any witness who can give material, by which I mean relevant, evidence.

A **THE APPELLANT:** So I can call my McKenzie friend?

**JUDGE CROWTHER:** If he can give material evidence, yes. The fact that he has acted as your McKenzie friend and been in proceedings throughout may affect our view of him if dispute is taken as to what he knows of events, whether he has acquired his knowledge though actual  
B presence, or whether, for example, he has acquired it through listening to the evidence of others. I seem to recall your McKenzie friend was not present throughout the first set of proceedings?

**THE APPELLANT:** Well you have a far better memory than mine, of course. I cannot  
C remember.

**JUDGE CROWTHER:** Well, he was behind you then.

**THE APPELLANT:** I cannot remember. But that, of course, leaves the issue of anticipating  
D his voracity would be putting in question as an excuse to not taking his evidence seriously.

**JUDGE CROWTHER:** It is not about not taking it ...

**THE APPELLANT:** (inaudible) the unique situation ...

**JUDGE CROWTHER:** Mr Kirk, the only issue now is whether you are going to give  
E evidence. I need you to answer whether you are going to give evidence, and I need that answer now.

**THE APPELLANT:** Are you in position of the McKenzie friend's witness statement about the  
F tape recording that was taken in the presence of Rogan in the vehicle lock?

**JUDGE CROWTHER:** Mr Kirk ...

**THE APPELLANT:** Yes or no, please.

**JUDGE CROWTHER:** ... I will only now determine the issue of whether we are going to hear  
G from you or whether you are going to call other evidence. I need an answer to that question. If you persist in refusing to answer, Mr Kirk, my having given you the formal warnings about the consequence of failure to give evidence, I am going to assume that you have decided not to, and  
H we will move on to hear any other evidence that you wish to call.

A **THE APPELLANT:** I wish, in the absence of legal advice, to make an application of no case to answer.

**JUDGE CROWTHER:** Yes.

B **THE APPELLANT:** May I have a copy, may I have a ...

**JUDGE CROWTHER:** Well there is no reason why you should not do that now. Let us hear your application.

**THE APPELLANT:** Yes. May I have a copy of Archbold.

C **JUDGE CROWTHER:** Well I will tell you principles.

**THE APPELLANT:** May I have it in writing, please?

**JUDGE CROWTHER:** No.

D **THE APPELLANT:** No, my memory, my short term memory, I, I can assure you is, is becoming unreliable. I might be very clever at remember things ten years ago, but it is now becoming a serious issue with me whilst in custody. The doctors say that it is to do with my conditions of custody, which I accept must be part of it, but I think it is a bit of old age. So am I entitled to something in writing, preferably from a recognise law book, to which I can refer? Because I have been denied access to any library in the prison since the other side of last Christmas, and yet other prisoners on D Wing, the drug wing, which is where I am incarcerated, have had more than one visit to the library to read their Beano.

F **JUDGE CROWTHER:** Let me tell you (inaudible) on no case to answer. There are two ...

**THE APPELLANT:** May I sit down? May I sit down?

G **JUDGE CROWTHER:** There are two circumstances in which a court will stop the case: 1) where there is no evidence that the crime alleged has been committed by the defendant. In this case, we have heard evidence from Mr Rogan that you put hands upon him and injured in circumstances described by him, which were not consistent with, as he says it, an arrest. In those circumstances, there is some evidence and ground one is not made out. The second ground is H where there is some evidence, but it is of a tenuous character. For example, because of inherent

A weakness or vagueness, or because it is inconsistent with other evidence. In this case Mr Rogan's evidence stands alone, it seems to me, and I think to us. In those circumstances, the only issue remaining is whether you were acting in pursuit of arrest of Mr Rogan. In those circumstances, the prosecution has made out the necessary threshold at this stage, and it is for you to go in the witness box and to adduce some evidence of your motivation. It is not for you to prove, it is what the lawyers call an evidential burden rather than a legal burden. But at this stage, it seems to me, that the prosecution has crossed the halftime threshold. Mr Smyth, would you say anything else in response to any submission at this stage?

**MR SMYTH:** Not at this stage, your Honour.

**JUDGE CROWTHER:** No. Thank you. Well the application, as I anticipated Mr Kirk would make it, is refused. Now, Mr Kirk, are you going to give evidence or not?

**THE APPELLANT:** May I hear the tape that the prosecution have delayed until today of the phone calls to the police ...

**JUDGE CROWTHER:** Mr Kirk, I am going to ask you one more time. Are you going to give evidence or not?

**THE APPELLANT:** In the light of your refusing me adjournment for legal representation and prosecution information that has only come to light today, leaving the prosecutor with some shade of embarrassment, I am unable to give evidence.

**JUDGE CROWTHER:** Thank you very much. Do you call any other evidence in this case?

**THE APPELLANT:** Again, without legal advice, I would ask for a 15 minutes adjournment.

**JUDGE CROWTHER:** No. You have had enough time in this case, Mr Kirk, to make your decisions as to which evidence you are going to marshal and call. Are you going to call any other evidence in this case?

**THE APPELLANT:** (inaudible) You wish me to call ... I wish to produce exhibits, your Honour, my MAPPA status.

A **JUDGE CROWTHER:** No. That is giving evidence, Mr Kirk. You said you are not giving evidence. The prosecution may agree some documents, I do not know. Mr Smyth, are you minded to agree documents like that or would you say they are not relevant to our consideration of this case?

B **MR SMYTH:** I struggle to see how a MAPPA document, whatever it is, would assist.

**JUDGE CROWTHER:** No. Well on the face of it we cannot, either.

C **THE APPELLANT:** Sorry, sorry, I, I, my hearing is good, but, and I am hearing everything he says, but I did not hear what he just said, because the legal argument that will take us all morning to a higher place (?). Could I ask that ...

**JUDGE CROWTHER:** Do you want to repeat your submission, Mr Smyth?

D **THE APPELLANT:** At the moment, I fail to see how any MAPPA status has any bearing in this case.

**JUDGE CROWTHER:** No, well we agree and do not regard the adduction of such evidence as the adduction of material evidence, and we refuse to allow it to go before the court.

E **THE APPELLANT:** Thank you, your Honour. Thank you for your patience, your Honour.

**JUDGE CROWTHER:** Now, Mr Kirk, do you intend to call any evidence?

F **THE APPELLANT:** I am sorry, (inaudible), because, I am sorry, obviously I forgot what I was listening to when I was speaking.

**JUDGE CROWTHER:** Now you have said you are not ...

G **THE APPELLANT:** Your Honour, in the light of these circumstances, unusual to extreme circumstances, I am in no position to present a case that would be considered fair across the bridge.

**JUDGE CROWTHER:** So be it. Well do you wish to address us in closing, Mr Kirk?

**THE APPELLANT:** Am I entitled to make an application for abuse of process?

H **JUDGE CROWTHER:** Well we have heard no evidence upon which an abuse of process argument could be founded, Mr Kirk, so the answer is no.

A **THE APPELLANT:** Can I take legal advice before that refusal is reconsidered by the bench?

**JUDGE CROWTHER:** Well we have given our ruling, Mr Kirk.

**THE APPELLANT:** Thank you, your Honour.

**JUDGE CROWTHER:** Do you intend to address us in closing?

B

**THE APPELLANT:** Well you know the answer to that, your Honour.

**JUDGE CROWTHER:** I do not, Mr Kirk, that is why I am asking you.

**THE APPELLANT:** For what purpose would it gain?

C **JUDGE CROWTHER:** Do I understand that you do not intend to address us in closing?

**THE APPELLANT:** I generally do not, but I, I am at a loss, in the light of your conduct, which is why the word 'recuse yourself' was raised more than once by yourself in these proceedings.

D **JUDGE CROWTHER:** No, I have only raised those words in quoting you, Mr Kirk, and you have made no application that I recuse myself.

**THE APPELLANT:** I would not be so stupid to do that, your Honour, and you know why.

**JUDGE CROWTHER:** Yes, well I infer from what we have heard that Mr Kirk does not seek to address us in closing. In those circumstances, we will retire and consider the evidence in this case, and give our ruling as soon as possible, but I think by half past 12 in any event.

E

**THE APPELLANT:** Your Honour, is there a need to retire? Because we were hoping to get a private taxi back to the prison because I have got, I promised to speak to somebody from London, and it is the only place I can get a private audience with him. Because here we cannot get private, we have to talk through glass.

F

**JUDGE CROWTHER:** Yes, I think you may find some difficulty in the gentlemen releasing you to a private taxi, Mr Kirk, unless you have made arrangements with the custodial staff.

G

**THE APPELLANT:** Well, well if I was legally represented, they have a, a room where there is no glass, because they put me in it by mistake yesterday, when they mistakenly left my friends out of the, the building after all had closed.

H

A **JUDGE CROWTHER:** Well we need to consider the evidence that has been given in this case  
and the many and careful submissions we have heard throughout it. So we will give our ruling  
as soon as we can, and I would hope, as I say, by half past 12. We will let you know. Thank you  
very much indeed.

B **THE APPELLANT:** The last time (inaudible) ...

**COURT CLERK:** Court please rise.

**(11.24am)**

C

### **RULING**

D

**(2.04pm)**

**COURT CLERK:** Court please rise.

**JUDGE CROWTHER:** Sit down please, Mr Kirk.

E Maurice John Kirk, who was born on 12<sup>th</sup> March 1945, appeals his conviction for  
common assault by the Cardiff Justices. The prosecution case is that Mr Kirk assaulted a prison  
officer, David Rogan. Mr Kirk admits the use of force, though not to the extent that Mr Rogan  
alleges, but submits that the force he used was justified in the making of a lawful arrest. In  
F hearing this appeal we have heard more of the appellant than is usual in such proceedings. That  
has not been by way of application by the prosecution but by the appellant telling us of his  
history. In summary, he has been by profession a veterinary surgeon and by inclination and  
G interest an aviator. He has led a full and at times exciting life, which has recently been blighted  
by litigation.

H I turn to the evidence, and I shall summarise it. Last September, having been remanded  
to Cardiff jail, Mr Kirk was granted bail by Judge Rees, the Honorary Recorder of Cardiff. The  
conditions of that bail did not preclude Mr Kirk from leaving the jurisdiction for his retreat in

A Brittany. He did, however, require his passport for travel. That passport had been on Mr Kirk  
when he was admitted to the prison and was held securely by the prison.

B On 2<sup>nd</sup> September, upon his release, he was asked to sign a release form and refused to  
do so. There is no legal obligation to sign, it became clear in cross-examination of the governor,  
C Ms Rowe, by Mr Kirk, but it is a requirement upon which the prison insists to protect itself from  
allegations of misconduct. In any event, Mr Kirk lay on the floor instead and a governor, Ms  
D Rowe, from whom we heard, was called. She made the decision that Mr Kirk would be removed  
from the prison and he was. He was given his money, or at least a bag of his cash was pushed  
under his stomach as he lay on the grass outside the prison, but not his passport. We heard that  
that distinction was made because it had been decided that Mr Kirk would need money upon his  
release, but that the passport was a valuable document that should be retained until he would  
account for its receipt.

E On 21<sup>st</sup> September last year, a Saturday, David Rogan was on guard in the gatehouse at  
Cardiff Prison, and some time after one o'clock in the afternoon he saw Mr Kirk and another  
F man sitting on a low wall outside the gatehouse. Mr Kirk asked Mr Rogan for his passport back.  
Mr Rogan told us that there is no access to the safe, where such important items were kept, at  
weekends, and he told Mr Kirk he did not have the passport. Mr Kirk accused Rogan of stealing  
his passport. Mr Rogan told him he would not ever have had it as he only worked in reception.  
G There is to the side of the gatehouse in Cardiff Argument a vehicle access point. It has a large  
full height door and is referred to as 'the lock' because there is another door at the far end. It is  
not an area which is open to the public and indeed it is a prohibited area and part of the prison.

H At this stage, Mr Kirk took advantage of the outer doors to the vehicle lock being open  
and ran inside. Mr Rogan followed Mr Kirk inside. That much is agreed. Mr Rogan says that  
Mr Kirk again accused him of being a thief, that he said he was going to make a citizens arrest  
and took hold of Rogan's shoulder and left wrist, holding the wrist strongly until Rogan prized  
his hand away. Mr Kirk then took out a mobile phone and called the police, telling them that he

A needed police there or he would 'kick up a fuss'. The police came and photographed Mr  
Rogan's wrist and it shows unpleasant bruising. Of this incident Mr Kirk says that he put one  
B hand on Mr Rogan's lapel and that he made no contact which could have caused the marks to Mr  
Rogan's wrist. In interview, Mr Kirk raised the possibility that Rogan had deliberately hurt  
himself later to set up a better claim against him. The police evidence was that the injuries to Mr  
C Kirk were clearly visible just after they arrived at 13.45 or thereabouts. Mr Kirk, having been  
warned of the consequences of failure to give evidence, had neither called nor given evidence  
before us.

As to the law, the use of force but not its extent is of course admitted by the appellant. A  
private person's right to use force to effect a lawful arrest is dealt with in Section 24(a) of the  
D Police and Criminal Evidence Act 1984.

Subsection 1: "A person other than a constable may arrest without warrant: (a) anyone  
who is in the act of committing an indictable offence; (b) anyone whom he has reasonable  
grounds for suspecting to be about to be committing an indictable offence."

E Subsection 2: "Where an indictable offence has been committed, a person other than a  
constable may arrest with a warrant: (a) anyone who is guilty of the offence; and (b) anyone  
whom he has reasonable grounds for suspecting to be guilty of it."

F Subsection 3, a general qualification: "The power of summary arrest conferred by  
subsections 1 or 2, is exercisable only if: (a) the person making the arrest has reasonable grounds  
for believing that any of the reasons mentioned in subsection 4, it is necessary to arrest the  
person in question; and (b) it appears to the person making the arrest that it is not reasonably  
G practicable for a constable to make it instead."

The subsection 4 criteria: "The reasons are to prevent the person in question: (a) causing  
physical injury to himself or any other person; (b) suffering physical injury; (c) causing loss of or  
H damage to property; or (d) making off before a constable can assume responsibility for him."

A In this case we interpret best provision to this effect. Mr Kirk would have had power to  
arrest Mr Rogan without a warrant if an offence of theft had been committed; and Mr Kirk had  
reasonable grounds for suspecting that Rogan was guilty of it; and Mr Kirk had reasonable  
B grounds for believing the subsection 4 criteria, or one of them, was made out; and it was not  
reasonably practicable for a constable to make that arrest. If these conditions are made out, then  
Mr Kirk, as a private person, could have used such force as was reasonable in the circumstances  
to make an arrest.

C We have reminded ourselves of the provisions of Section 3 of the Criminal Law Act  
1967 and Section 76 of the 2008 Criminal Justice and Immigration Act. We have reminded  
ourselves that it is for the prosecution to make us sure that the Section 24(a) criteria are not made  
D out.

E I will turn to analysis. What, then, is the evidence? First, on the point of theft. Governor  
Rowe gave evidence that valuable items upon a prisoner on admission would be retained and  
stored safely for collection upon release. One of the items which came to the prison with Mr  
F Kirk, was his passport, and it was retained. Mr Kirk was released on 2<sup>nd</sup> September and refused  
to sign for that passport. The prison requires the signature so it has an auditable trail of the  
custody of valuables. There had been a decision to release cash to Mr Kirk because cash is  
separately sealed and accounted for, and it was part of the prison's duty to ensure he had funds  
G on release. The passport remained in the prison because the safe in which it was kept could not  
have been opened on 21<sup>st</sup> September. Indeed, it became apparent during the first day of this  
appeal that the passport was still with Mr Kirk's property in the prison. Governor Rowe denied  
H Mr Kirk's suggestion that the prison had kept the passport on the orders of the police. It has  
been, she said, simply retained as his refusal to sign had meant there could be no auditable record  
of the release. In the result, Mr Kirk signed for his passport's release and Governor Rowe  
authorised the handover of the passport to Mr Kirk's ex-wife, in controlled and carefully  
monitored circumstances ...

A **THE APPELLANT:** I signed nothing.

**JUDGE CROWTHER:** ... in the court cells during this appeal.

**THE APPELLANT:** I signed nothing. You can change the phone numbers around earlier on ...

B **JUDGE CROWTHER:** We are quite satisfied on evidence that the ...

**THE APPELLANT:** ... but now you are changing documentary evidence.

**JUDGE CROWTHER:** Could you take him down, please. We are quite satisfied on the  
C evidence ...

**THE APPELLANT:** Now we understand why he was kept back those phone calls.

**JUDGE CROWTHER:** ... that the prison have not in any sense appropriate Mr Kirk's  
D passport.

**THE APPELLANT:** You understand, they have switched the information on each phone call,  
and I signed nothing.

**JUDGE CROWTHER:** It had not assumed the obligations of an owner, but was simply acting  
E as custodian. There was no intention permanently to deprive. Its rules for its release were simple  
and reasonable and it was Mr Kirk's petulant response to authority that stymied him. There was,  
we are satisfied, no offence committed by the prison or by Mr Rogan, who had no role at all in  
F holding the passport.

In deference to the argument, we will turn briefly to the other elements of Section 24(a).  
As to whether Mr Kirk had reasonable grounds for suspecting that Mr Rogan had committed an  
offence, we have reminded ourselves that the test of reasonable ground for suspicion is partly  
G subjective, in that the arrestor must have formed a genuine suspicion that the person being  
arrested was guilty of an offence, and partly objective, in that there have to be reasonable  
grounds for forming such a suspicion.

H In our judgement, the prosecution has made us sure that Mr Kirk had no real suspicion  
that Mr Rogan had committed an offence. Mr Kirk knew well that he could have had the

A passport if he was prepared to adhere to the prison's rules of collecting property, but he preferred not to. He chose, instead, in the words he used when calling the police to, and I quote, "Make a fuss." We suspect that Mr Kirk likes to be the centre of attention, even adverse attention.

We can note, briefly, that none of the Section 24(a) subsection 4 criteria are made out, and the fact that the arrest could have been effected by a constable is demonstrated effectively by the fact that the police were very quick to attend at Mr Kirk's call. We are therefore satisfied so we are sure that Mr Kirk was not entitled to use force to attempt to arrest Mr Rogan.

It is, of course, necessary for us to consider what degree of force was used, not to judge its reasonableness, for force used in an unlawful arrest attempt can never be reasonable, but because we may yet be called upon to determine an appeal against sentence. In this regard we remind ourselves that there was an immediate and visible injury to Mr Rogan, that Mr Rogan told the police that Mr Kirk had caused it, that the injury was photographed by the police, that Mr Kirk did not, on cross-examining Rogan, suggest it was self inflicted, though he had an interview, and Mr Kirk has not given evidence on the point.

We are satisfied as to this issue, which we regard as important in the context of the case, that Mr Kirk failed to give evidence because he had no explanation for the injury to Mr Rogan's wrist or none that would stand up to cross-examination, and we regard that failure as some support for the prosecution case. Although Mr Kirk has raised a metaphorical sceptical eyebrow at the evidence that there was no recording CCTV in the vehicle lock, as opposed to the exterior entrance, and we are surprised at that, and although during the course of the hearing he repeatedly promised that we would see a video of the incident made by his companion, no such video has ever been adduced as evidence. Accordingly, we prefer the evidence of Mr Rogan to Mr Kirk on the point. We are therefore satisfied that Mr Kirk caused the wrist injuries in the way that Mr Rogan described.

We should like to say something of the many ancillary applications made during this case. Mr Kirk has made repeated applications for disclosure. Those applications have included

A requests for the DVD of his police interview, which was disclosed to him in April, of the notes of  
the legal advisor in the Magistrates' Court, which were disclosed during the first part of this  
B appeal, and of the CCTV of the vehicle lock in Cardiff Prison, which CCTV does not exist and  
has never existed. We have been asked to issue witness summonses for prison officers and  
police officers who could cast no light on the central issue; for unnamed employees of the  
Passport Office; for unnamed constables of the Gwent Police; and for senior employees of the  
HMCTS. Those applications have failed for want of materiality, and of relevance to the narrow  
C central issue in this case.

We have heard a great deal from Mr Kirk in the course of his submissions about his  
dispute with a forensic clinical psychiatrist and with the former chief constable of South Wales  
D Police. We can detect no relevance whatsoever in those matters to this case, but we have been  
acutely careful to ensure that our assessment of Mr Kirk's submissions have not been affected by  
knowing that history as we do.

We heard and rejected a submission of no case to answer, upon the basis that the  
E prosecution's evidence clearly raised the issue of an unlawful arrest, which issue required some  
evidence on behalf of the defendant. He chose not to give evidence, notwithstanding having  
been warned as to the potential consequences of that failure. Mr Kirk put before us a written  
application to stay these proceedings for abuse of process, but again gave no evidence in support.  
F

We have been patient with and I hope courteous to Mr Kirk. He has been allowed an  
amanuensis and latterly a McKenzie friend. We have been generous with time and have made  
every possible allowance for what Mr Kirk has told us is his failing eyesight and short term  
G memory. Mr Kirk, for the prosecution, has not only fulfilled his obligations as prosecutor, but  
obviously striven to ensure that the appellant's concerns have been met.

We have been left with the abiding impression that the appellant has sought to conduct  
H this case, which he has at times called an 'irrelevant appeal', as a means to acquire information

A for his other long running disputes, and it has been necessary at times to ensure focus on the relevant issues in this case has not been lost.

This appeal is refused.

B Given that much of that ruling was given in the absence of Mr Kirk, who became unruly, I shall hand down the draft. If there is any difference between the draft and the ruling as given, it is to be resolved by reference to the transcript. One for Mr Smyth and one to go to Mr Kirk.

**MR SMYTH:** Thank you very much, your Honour.

C **JUDGE CROWTHER:** Are you prepared to take custody of that draft ruling for him, sir?

**MALE SPEAKER:** (inaudible)

D **JUDGE CROWTHER:** Thank you very much indeed. Now what of the appeal against sentence? We will assume that Mr Kirk wishes us to pursue it. We do not, of course, know anything about his antecedents.

**MR SMYTH:** No.

**JUDGE CROWTHER:** Except the matters which have been tangentially referred to.

E **MR SMYTH:** I have a copy, I have got a marked copy and by that I mean highlighted, I am afraid. I am just checking whether there is a clean copy for your Honour.

**JUDGE CROWTHER:** Do not trouble, Mr Smyth, a highlighted copy will serve us perfectly well.

F **MR SMYTH:** Your Honour, can I hand up a document that has had added the sentence imposed in this case, plus some other disposals that are relevant for the reasons I will indicate in a moment?

G **JUDGE CROWTHER:** Yes.

**MR SMYTH:** I have now got a clean copy after all. **(Handed)**

**JUDGE CROWTHER:** Thank you. What was the sentence?

H **MR SMYTH:** The sentence for this case was 12 weeks imprisonment, and it is indicated on the, in handwritten form on the list I have handed up.

A **JUDGE CROWTHER:** Yes.

B **MR SMYTH:** The chronology is probably quite important, because at the time of this offence in September he was on bail, as you have heard, for offences of common assault times two and witness intimidation, which have found their way to the Crown Court. That was the matter in respect of which he had been granted bail, I think it was 2<sup>nd</sup> September, where he had refused to sign.

**JUDGE CROWTHER:** Yes.

C **MR SMYTH:** Subsequently and this arose from 13<sup>th</sup> and 14<sup>th</sup> October, he was charged with further offences, which were breach of a restraining order not to promulgate information concerning Dr Williams on his website, and for making threats to cause damage, which was burn Dr Williams' house down. That matter went to trial at Cardiff in March and he was convicted by D a jury, and he was sentenced to a total of, I think it was 16 months, 8 months time two consecutive. But he was not on bail for that particular matter, quite, when this offence was committed.

E **JUDGE CROWTHER:** No.

F **MR SMYTH:** But as a result of that conviction, the prosecution took the view that they would discontinue the common assault and the witness intimidation, because frankly they were relatively minor matters. No injuries were caused, there was push and I think a poke, and a gesture from within a car.

**JUDGE CROWTHER:** Now what about the Bristol appeal?

G **MR SMYTH:** Now that is still outstanding. Unfortunately, having now gone to Bristol, the Bristol court perhaps not so familiar dealing with Mr Kirk, has been met with the usual catalogue of requests for disclosure, again which I have endeavoured to deal with, for example even attending to inspect another file at the Magistrates' Court. So I am afraid we are still awaiting a date for the hearing of that.

H

A **JUDGE CROWTHER:** Yes. Was he on bail for the what is now the Bristol appeal matters at the time of this offending, or was he only on bail for those matters which have subsequently been discontinued?

B **MR SMYTH:** Well I find the statement of bail for these appeals somewhat difficult.

**JUDGE CROWTHER:** Forgive me, I have used a shorthand.

**MR SMYTH:** Yes.

C **JUDGE CROWTHER:** Was he on bail for the offences which resulted in convictions which are now being heard before the Bristol Crown Court at the time of this offending?

**MR SMYTH:** That is the matter that appears at item 18 on the list.

**JUDGE CROWTHER:** Right.

D **MR SMYTH:** That is common assault upon, and I hesitate to say it, the counsel that previously prosecuted Mr Kirk, where the result was a conditional discharge. So that matter was dealt with on 25<sup>th</sup> June. So the answer to your Honour's question is, no, there he was not.

**JUDGE CROWTHER:** No. Was it a district judge or a bench in the Magistrates'?

E **MR SMYTH:** A district judge.

**JUDGE CROWTHER:** The district judge was faced with an aggravating feature, which he properly reflected, that is offending on bail, and of course that aggravating feature still exists, although there has been a discontinuance.

F **MR SMYTH:** Yes.

G **JUDGE CROWTHER:** But he may have given that aggravating feature different weight had he known what was going to happen, potentially. In any event, we have the option of giving it different weight now ...

**MR SMYTH:** Yes, yes.

**JUDGE CROWTHER:** ... and we know what happened.

H **MR SMYTH:** Yes.

**JUDGE CROWTHER:** Yes.

A **MR SMYTH:** Well there are two other aggravating features, if I may point to them. The is, of course, Mr Rogan was a man carrying out a public service.

**JUDGE CROWTHER:** Yes.

B **MR SMYTH:** This was an offence committed within a private area, a secured area, a supposedly secure area of prison premises.

**JUDGE CROWTHER:** Yes.

C **MR SMYTH:** The injury was painful. I would not say it is particularly serious in the context of common assault, but it was not minor either.

**JUDGE CROWTHER:** It is lesser harm, higher culpability within common assault, is it not?

**MR SMYTH:** Yes. Still starting point fine.

**JUDGE CROWTHER:** Yes.

D **MR SMYTH:** But, of course, the factor is his record, and highlighted I think you will see previous convictions for common assault.

E **JUDGE CROWTHER:** Yes, we will rise and consider matters and those who are interested in Mr Kirk's wellbeing can be reassured that we will not come to an adverse conclusion without having him back up to hear from him. Thank you.

**COURT CLERK:** Court please rise.

(2.26pm)

F

### RULING

(2.30pm)

G **COURT CLERK:** Court please rise. (pause) The officer tells me Mr Kirk is refusing to come back into court.

**JUDGE CROWTHER:** Yes, I was not expecting him to.

**COURT CLERK:** He has asked whether he can be transferred back to jail?

H

**JUDGE CROWTHER:** Yes, Mr Kirk can go back. Thank you.

A **MALE SPEAKER:** Thank you, your Honour.

**JUDGE CROWTHER:** Yes, Maurice John Kirk was convicted of a petulant and calculated assault upon a public servant, motivated by Mr Kirk's pursuit of an *idée fixe*, resulting in some unpleasant harm to Mr Rogan, a prison officer. Before the learned judge in the court below, the feature had to be born in mind that Mr Kirk was on bail for two similar offences, Section 39 assaults and for an offence of witness intimidation at the time of the commission of this offence. Those offences were subsequently discontinued. That does not remove the aggravation, of course, for offending on bail, but it does, in our judgement, affect the weight to be given to that aggravating feature, the fact of subsequent discontinuance.

D Taking into account all the features of this case, and with the perspective available to us, at this stage of proceedings, we are persuaded that the sentence was manifestly excessive, and in the circumstances we propose to reduce the sentence from one of 3 months imprisonment to one of 6 weeks imprisonment. By what is coincidence, that is likely to result, I suspect, in Mr Kirk's release very soon. So that extent this appeal is allowed.

E **MR SMYTH:** I am duty bound to raise the issue of costs, your Honour.

**JUDGE CROWTHER:** Yes, and I should have mentioned it, Mr Smyth, be we did consider it outside. We considered first the question of compensation. We consider that in the particular circumstances of this case and of this appellant, that it would not be usual to make a compensation order and that Mr Rogan will have to turn to other sources for compensation for his injury.

**MR SMYTH:** Yes.

G **JUDGE CROWTHER:** In those circumstances, we prioritised compensation and we are not minded to make an order for costs either.

**MR SMYTH:** So be it.

**JUDGE CROWTHER:** Yes. Thank you very much indeed.

H **COURT CLERK:** Court please rise.

A (2.34pm)

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

B

Signed: Mendip-Wordwave Partnership

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