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IN THE CROWN COURT
AT CARDIFF

Indictment No. T20120090

The Law Courts
Cathays Park
Cardiff
CF10 3PG

4th May 2012

Before:

HIS HONOUR JUDGE CURRAN QC

REGINA

- v -

MAURICE KIRK

MR GARETH EVANS appeared for the Prosecution

THE DEFENDANT appeared in person

PROCEEDINGS

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4th May 2012

PROCEEDINGS

(10.40 am)

MR EVANS: Your Honour, before the jury come in, I apologise for speaking before you have even sat down, the laptops have been retrieved from the property store and the officer in the case has them. I have asked him to bring them into court now. Mr Kirk has asked for them already now but I thought I would wait until he came into court. Can he be provided with those laptops in the dock?

JUDGE CURRAN: Yes.

MR EVANS: Thank you.

MR KIRK: Sorry, am I going to have my laptops now?

JUDGE CURRAN: I just said yes.

MR KIRK: Sorry, my hearing is not good.

(Jury in)

JUDGE CURRAN: Can the officer be recalled?

MR EVANS: Your Honour, yes. The laptops have been brought in now. They need to be signed for by Mr Kirk when he retrieves them. Would you like me to hand them to him now?

JUDGE CURRAN: Yes. Where is something for him to sign?

MR EVANS: Your Honour, it is with the computers.

JUDGE CURRAN: Can it be handed to Mr Kirk then please?

MR EVANS: Mr Kirk, would you sign for the laptops please?

MR KIRK: Am I obliged? No. Your Honour, do I have a legal obligation to sign anything?

A **JUDGE CURRAN:** Well, since I am witnessing that the laptops are being handed over to you, you are under no obligation to sign anything if you do not want to, Mr Kirk.

MR KIRK: I know, your Honour, but we have to try and maintain standards. Can I keep this? I am keeping it anyway.

B **JUDGE CURRAN:** Have you any other questions of the officer?

MR KIRK: Your Honour, I have good news for you, good news for the jury, but also bad news depending on the conduct of those in positions of privilege in this room. I only need this officer for under 30 minutes. We have new information. Subject to his answers and subsequent disclosure from public records, I need to call only one defence witness and I will not need to give evidence myself. That will bring a sigh of relief to some people in this room.

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D **PC (inaudible)** sorry. Exhibits for the case, could I make sure I understand what the exhibits are? Your Exhibit 4, could you just look at that one please, which I think is the restraining order? I have lost track, your Honour, of which exhibits are going to go before the jury.

FEMALE VOICE: (Inaudible) statement of Mr Barker. The copy of the restraining order is Exhibit 1.

MR KIRK: I put your initials/4 on the top of the restraining order, so whichever is ... could the restraining order be made an exhibit?

F **MR EVANS:** It is Exhibit 1, my Lord.

PC (inaudible) – previously sworn

Cross-examination by MR KIRK

MR KIRK: I need to see it to check it is the one that was served on me. Quick as you can, can I have a quick look to check it is the one that was served on me and it is the one that is going to go before the jury? Yes, that is G4, (inaudible) 4, Exhibit 1, yes, that is the one. It has got the stamp on there, 9th December, has it not?

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A **THE WITNESS:** That's correct.

Q: You have seen the bundle from the public record of the Magistrates Court, have you not, 59 pages?

B **A:** No, I haven't, sir.

Q: Right, well that is going to be an exhibit to make sure there is no doubt about that. The jury have already been through that so can you have a look at that please (inaudible). Well, it is a court exhibit, is it not? It already is a court exhibit.

C **MR EVANS:** Your Honour, the Magistrates Court file is not an exhibit as yet. Elements of it are, of course, but not the full file.

JUDGE CURRAN: I imagine, Mr Kirk, what you want the officer to look at is the last page of the Magistrates Court file, is it not?

D **MR KIRK:** No, no. Last night my legal advisors from London, who have been following this case and been coming to the magistrates, had a real row with me yesterday, because each night when you say, just like the machine-gun case, just coming up to eight months in prison, E exactly the same situation, on the last day of the trial, possibly the last day of the trial, the judge tells my witnesses, defence witnesses, they can come and speak to me down below, and in the machine-gun case the people that hold me, this organisation, which in most cases is F Reliance, refuse me access to my witnesses, exactly the same thing has happened again and there are four people there in the public gallery who will confirm ... and they have already written statements in advance on this issue.

G Now, I wish you to know that, because it is going to be the final questions for this witness and they will be calling evidence if I don't get the information or you do something about me getting access to the most important exhibit in this case so far, and that is public records. We have got one sorted out; I now want Exhibit 2 either for the prosecution or for

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A the defence, and that is the bundle that you kindly presented to the court, because you already
had a copy I noticed, and he had copy and I numbered them 59 pages and I want him to look
at pages 14, 16, 17 and 34. Could I please get someone to get me my copy from downstairs?
B I've managed to get my papers out of the prison for the first time. They are actually only
down below, but what I forgot (inaudible) speaking to your Honour, GEOAmev said, "We are
in control of you as a prisoner, not the prison," and I said, "What about the judge of the
court?" They said no. I said, "But the judge of the court said that I could have access to my
C witnesses and my legal advisors," and they said no. Last night and the time when you said it,
which was

JUDGE CURRAN: I asked you if you had any more questions for the officer.

D **MR KIRK:** Yes, I referred to the main exhibit in the case, which is, apart from the so-
called restraining order, is the bundle of public records, page 14, pages 16 and 17, which is
records, your Honour, from the Magistrates Court of my second time round filing an appeal on
7th December, personally. The next page in that bundle, 17 I expect, is a Sarah Richards, who
E is the witness I need only call to wrap this case up, who, because I filed an appeal, possibly,
got down to making documentation to record what happened in my absence and the main one,
of course, is the restraining order, the memorandum of conviction. Now that's an exhibit,
F isn't it? That is an exhibit. I must know what exhibits the prosecution are relying upon and if
they are not, I have got to trick you into getting them introduced with the last opportunity I
have got, and that is this last prosecution witness.

JUDGE CURRAN: I am going to ask the officer now to leave the witness box. As I
G explained to you yesterday, the only knowledge he has of this case is what you told him when
he was interviewing you. He was not involved in the case which was heard in the Magistrates

A Court which led to your being convicted of the offence under Section 2 of the Protection from Harassment Act ...

B **MR KIRK:** Bollocks. He was investigating an alleged offence when they conspired because prisoners are never given a copy of restraining orders. I have 18 remand warrants, sorry, restraining order prisoners on my wing, I have interviewed twelve of them and not one of them, I haven't got at the other six, not one of them was handed a restraining order in Cardiff Magistrates before they went to prison. If you look on the records that I have still been asking for, which is GEOAmeey records, which they've tried to palm off onto me ...

C **JUDGE CURRAN:** Mr Kirk, you are not assisting your case at all by shouting at me. Just take a seat for a moment please.

D **MR KIRK:** Am I going to get public record for the jury to see as an exhibit that has been referred to throughout by the prosecution, where they referred to a Dr Tegwyn Williams who is reliant upon Section 4, not Section 2 of that Harassment Act. That restraining order is (inaudible) without the legal advice, because it was altered in the first paragraph, which is not on the draft version that has only just been released by the CPS and given to me late yesterday afternoon. I have four members of the public, one, two, three four, who have signed statements to say that they saw, when I didn't come back to court, the CPS and Charles up and down, up and down, and they saw not only the makings of this document without the heading on it and without the black stuff at the bottom, they saw the judge handwriting over the top of it and instructions that he was to bring it down to me for my opinion. My lawyer, who was interviewed and emailed and his email has actually not been pulled from that bundle, because
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G whoever was made to do it didn't take his job seriously enough ...

MR EVANS: Forgive me, your Honour ...

MR KIRK: ... is the prosecution case now finished?

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A **MR EVANS:** Yes, it is.

MR KIRK: No, it's not. I haven't finished cross-examining. You mean he is not even going to re-examine on the information I am now wishing to introduce to the jury? Very, very worrying that he has not re-examined any of the prosecution witnesses.

B **JUDGE CURRAN:** He was not there, Mr Kirk. Do you want to give evidence yourself?

MR KIRK: I wish to get at my legal papers. They are downstairs. The prison realise what is going on in this building and they are fighting their own corner. I have been assaulted. They have said I must have a brain scan. I have in writing. My sister, a magistrate, has managed at last to get this ... they each time, photographs and evidence from Mr Merion Bowen (?) from Mr Burke and possibly from (inaudible), has come to the prison and Sabine McNeil from Germany who has been helping me with the email side and website side as a McKenzie friend to do with the Muser (?) children, has been cut off and their mail has been blocked. I have been brought before a deputy, the chief security officer, Sarah, Sarah, wing officer, security officer for the prison, saying that the police are now considering an indictable offence of incitement to riot, because I have organised 400 people today at the Muser case criminal trial in London, outside Haringay, for 400 people to lie in the road objecting about the criminal conduct of the snatching of six of their children.

JUDGE CURRAN: Do you intend to give evidence?

F **MR KIRK:** It depends on whether you let me get at my legal papers that are downstairs.

JUDGE CURRAN: Mr Kirk, I am not going to let you get at what you call your legal papers. The issues in this case are: was there a restraint order, was it served on you and were you a party to putting the material on the net? That is all this case is about and the court is not going to be used as a platform to rehearse all the matters which led up to your being convicted.

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A **MR KIRK:** (Inaudible)

JUDGE CURRAN: Could I ask you to go to your retiring room for a moment, members of the jury?

(Jury out)

B **JUDGE CURRAN:** I am going to rise for a short while to give the defendant an opportunity of calming down. He can then be asked whether he is asked to come back to court.

(10.56 am)

C **(Short adjournment)**

(11.21 am)

D **JUDGE CURRAN:** I am going to put some of this on the record in order to clarify the transcript, as it were, if there is any subsequent application in connection with this. The uproar that would be apparent on the transcript began when Mr Kirk started to remove his trousers and was reaching behind him for something. I am now informed, after he had been restrained by the dock officers and taken down to the cells, that he is bleeding from the rectum, having removed something or excreted something from a place of concealment inside him, as I understand it. Is that right? The dock officer is nodding. When you say he is bleeding from the rectum, how severe is this?

E **DOCK OFFICER:** I obviously haven't seen anything, your Honour, it's just what he's telling me.

JUDGE CURRAN: What he says?

F **DOCK OFFICER:** What he says, yes. He's had to actually go to the prison and see the prison doctor to be examined.

G **JUDGE CURRAN:** Mm?

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A **DOCK OFFICER:** He's had to go over to the prison, to the prison doctor, to obviously be examined. We can't do anything.

JUDGE CURRAN: He is to be told to come back up into court please. I will deal with this in the absence of the jury for the moment.

B **MR EVANS:** Your Honour, yes.

(Pause)

JUDGE CURRAN: I have been asked by the clerk to make it clear that the McKenzie friend was unaware of what was going to happen and I am quite prepared to accept that and I have said it to put it on the record.

MR EVANS: Thank you, your Honour.

D **MCKENZIE FRIEND:** I would like to withdraw as Mr Kirk's McKenzie friend (inaudible).

JUDGE CURRAN: That is a perfectly understandable reaction, thank you.

E **DOCK OFFICER:** I understand he is refusing to come up from the cells until he has legal visit from his McKenzie friend.

JUDGE CURRAN: The McKenzie friend has withdrawn. Would you inform Mr Kirk that his McKenzie friend has withdrawn and in the circumstances he must come back up into court please?

F (Pause)

DOCK OFFICER: Your Honour, he says he is not coming to court until he speaks to his witnesses, not the McKenzie ... witnesses in the case.

G **JUDGE CURRAN:** He is to be told to come into court. He will be able to call witnesses if he wants to, but he is not going to be speaking to anybody now; he has got to come into court.

(Pause)

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A **DOCK OFFICER:** He needs to speak to his brief, he needs to see a doctor. If the brief tells him to come to court, he will come to court.

JUDGE CURRAN: He needs what?

B **DOCK OFFICER:** He said he needs to see a doctor and then he said he needs to see his brief, I don't know which one is his brief, and if the brief tells him to come to court, he will come to court, but he wants to see his brief first.

JUDGE CURRAN: He has not got a brief.

C **DOCK OFFICER:** No, I know, that's what I ... I think it's the gentleman who come down with him yesterday, the McKenzie ...

JUDGE CURRAN: Yes, well the McKenzie friend has withdrawn. I shall draft a document which will have to be handed to Mr Kirk.

D (11.38 am)

(Short adjournment)

(11.48 am)

E **JUDGE CURRAN:** I will need one of the dock officers in court please, the one who is in charge, I think it had better be.

(Dock officer in court)

F **JUDGE CURRAN:**I have drafted a document which I am going to ask you to take down to the cells and read out to Mr Kirk. Since it has gone off to the photocopier, I will have to wait for it to come back, because what I want you to do is to tell him that it is from the judge and to read it out to him, since I gather he is declining to come back into court.

G (Pause)

JUDGE CURRAN:Thank you very much. I am going to ask the dock officer to read this, to tell Mr Kirk that this is from me and to read it out to him. "The prosecution have concluded

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A their case and 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 if, having been sworn, you refuse without good cause to answer any
B question, the jury may draw such inferences as appear proper. That means they may hold it
against you. You may also call any witness you have arranged to attend court. Afterwards you
may also, if you wish, address the jury by arguing your case from the dock, but you cannot at
that stage give evidence. Do you now intend to give evidence? I further have to warn you that if
C you refuse to return to court, the trial will continue in your absence and after the summing up the
jury will retire to consider their verdict. You are therefore advised to return to court.”

I will hear anything the prosecution want to say about that, but in the circumstances of
this case, I regard that as the appropriate course of action.

D **MR EVANS:** Your Honour, yes.

JUDGE CURRAN:I am not prepared to have the trial process thwarted by Mr Kirk’s
behaviour. Now I will hand down the document please and there is one for the court file.
E (Handed down) You can hand the document to him as well, but I want you to read it out to him
first please, because I do not want there to be any argument about whether or not he has not been
told.

F **(11.54 am)**

(Pause)

(12.04 pm)

JUDGE CURRAN: Can the officer be sworn?

G **(Dock officer sworn)**

JUDGE CURRAN: If you could just state your name and occupation.

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A **THE WITNESS:** I am SCO Jackie Davies, Senior Custody Officer from downstairs,
GEOAmey.

JUDGE CURRAN: Yes. Have you read the document that I gave you to Mr Kirk?

B **A:** Yes, I did, your Honour.

JUDGE CURRAN: What is his response?

A: He would like it dated and signed who it is from, in order to say who it is to and who it is
from and the date and the time, because he says there is nothing recorded on that.

C **JUDGE CURRAN:** You have read it to him?

A: I have.

JUDGE CURRAN: Yes. Is he coming back into court?

D **A:** Well, he just wants that and then related back to him, so he didn't give me an answer. He
was actually on the toilet, but he wanted it read on the toilet.

JUDGE CURRAN: If you hand me the document, I will sign it.

(Document handed to judge)

E **JUDGE CURRAN:** There we are.

A: Thank you.

JUDGE CURRAN: Would you read it to him again when you go down ...

F **A:** Yes, your Honour.

JUDGE CURRAN:... and as long as he understands, because I intend to proceed with the trial
if he is not coming back into court.

(12.07 pm)

G **(Dock office withdraws)**

(12.16 pm)

JUDGE CURRAN: Would you come back into the witness box?

H 12

A **THE WITNESS:** Yes, the document has been read again and handed to him. I have read it and his words were, “I want to see a witness now.” That’s all he said.

JUDGE CURRAN: Well, I shall ask you to go back down to see him again to tell him that if he does not come back up into court, I am going to proceed with the trial.

B **A:** Right, thank you.

(12.17 pm)

(Witness withdraws again)

C **(12.26 pm)**

THE WITNESS: Your Honour, this is from Mr Kirk. “I am not in a position to give evidence; I wish my witness to give evidence, so no need for me to attend. The witness is Dr Tegwyn Mal Williams. If they want me to attend and no-one else available to examine, I may be able to do it.

JUDGE CURRAN: Can I see that?

E **CELL MANAGER:** Your Honour, this is from Mr Kirk. “I am not in a position to give evidence. I wish my witness to give evidence so need, so no need for me to attend. The witness is Dr Tegwen Mal Williams. If they want me to attend and no-one else available to examine I may be able to do it”.

F **JUDGE CURRAN:** Can I see that? **(handed)** The request for the attendance of Dr Williams is something that has been repeated throughout by the Defendant. Dr Williams is the subject of the restraining order. It was because of the Defendant’s harassment of Dr Williams that he was convicted of the offence under Section 2 from the Protection from Harassment Act in the Cardiff Magistrates’ Court. Dr Tegwen Williams is not the Defendant’s witness. He was a witness who was correctly abandoned by the Crown. As putting him in the witness box when he had no evidence to give directly concerning the breach of the restraining order would simply have

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A afforded the Defendant the opportunity of continuing the campaign of harassment against the
doctor by having him cross-examined in a public court, when he is not in a position to give any
relevant evidence in the case. I have already refused an application by Mr Kirk to have a witness
summons served on Dr Tegwen Williams compelling his attendance at this court and I will not
B grant such a witness summons.

In the circumstances, Mr Kirk is to be informed again that Dr Tegwen Williams is not a
witness in this case; he is not going to be called and unless he comes back into court
C immediately the trial is going to proceed without him. Would you mind doing that please?
Thank you very much for your assistance.

(12.29pm)

(PAUSE)

D **(12.39pm)**

CELL MANAGER: From Mr Kirk, your Honour. "I needed to see a doctor. I need to be
taken back to prison but would like Mr Edwards from North Road to give evidence and there
E will be no need for me to attend because the court has his statement.

JUDGE CURRAN: Is Mr Ivan Edwards in court?

MALE ONE: No, your Honour.

JUDGE CURRAN: No. Thank you very much.

F **CELL MANAGER:** Thank you.

JUDGE CURRAN: Well I intend to continue the trial. It will not be appropriate for you to
address the jury a second time since the Defendant has not given evidence. I shall in effect tell
G them what happened, but in fact I shall give them a direction that they are not to hold his absence
against him in any way or to regard it as support from the prosecution case.

A **MR EVANS:** No. Your Honour, whilst I am in absolute confidence of course that your Honour
has these points already, I think I am duty bound in the absence of the Defendant to raise them in
any event as part of the summing up your Honour will give. Those matters are paragraph 4-441
B of Archbold the latest edition. I take absolutely no disrespect in pointing that out to you, your
Honour. Simply in an abundance of caution. Page 505 of Archbold. The bottom half of 4-441
and it is where a Defendant is unrepresented it is generally desirable to tell the jury he is open to
...

C **JUDGE CURRAN:** Oh yes. I can certainly do that.

MR EVANS: ... out of an abundance of caution.

JUDGE CURRAN: Yeah. Can I have the jury back in please? Two questions asked by the
D jury. "Is there CCTV footage of the restraining order being handed over? Cell three. If not,
why?" The answer is there is no footage. There is no evidence about it and you will have to
deal with the case on the available evidence. "Could we see Michael Williams' record of the
presentation of the restraining order as referred to by Lee Barker?" Again Mr Williams has
E given evidence and there is no evidence of his record of the presentation of the restraining order.
That is the answer to that. Thank you.

F **(JURY IN)**

(12.44pm)

JUDGE CURRAN: Thank you for your note, ladies and gentlemen. The first question is, you
asked was this, "Is there CCTV footage of the restraining order being handed over? Cell three.
G If not, why?" You decide the case on the evidence and there is no evidence of CCTV footage in
this case. Your second question is, "Could we see Michael Williams' record of the presentation
of the restraining order as referred to by Lee Barker?" Again, Mr Williams gave evidence before

H 15

A you but with, any record of the presentation of the restraining order is not in evidence and is not
part of the evidence. You have to decide the case on the evidence that you heard and nothing
else. I deal now with the absence of Mr Kirk from the dock. After the outburst in the course of
B which I think you saw him begin to remove his trousers and reach towards his rear, he was taken
down to the cells.

After a delay to allow him to calm down, I ultimately got the, he was declining to come
back into court so I got the dock officer to read this document out to him, which I signed. “The
C prosecution have concluded their case and 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 if having been sworn you refuse without good
D cause to answer any question, the jury may draw such inferences as appear proper. That means
they may hold it against you. You may also call any witness you have arranged to attend court.
Afterwards you may also if you wish, address the jury by arguing your case from the dock but
you cannot at that stage give evidence. Do you now intend to give evidence? I further have to
E warn you that if you refuse to return to court, the trial will continue in your absence and after the
summing up, the jury will retire to consider their verdict. You are therefore advised to return to
court”.

F The first response of Mr Kirk was to say that he wanted to see his Mackenzie friend who
has withdrawn from that position. He then said that he wanted to see his witnesses. He then said
by means of a note which was sent to me, when I sent the dock officer back down to tell him that
the case would proceed in his absence if he did not come up into court, “I am not in a position to
G give evidence. I wish my witness to give evidence, so no need for me to attend. The witness is
Dr Tegwen Mal Williams. If they want me to attend and no-one else available to examine, I
may be able to do it”. He was told again as I repeatedly told him through the case that Dr

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A Williams is not a witness in this case and I have refused his application for a witness summons
to bring Dr Williams to this court. Again he was warned by the dock officer that he did not
come back into court I was intending to proceed with the trial in his absence.

B He then sent a note saying, "I need to see a doctor. I need to be taken back to prison but
would like Mr Ivan Edwards, North Road, to give evidence and there will be no need for me to
be present because the court has his statement". Mr Ivan Edwards is not here; is not known to
the court; and the court does not have his evidence or any statement from him. It is therefore my
C intention now to conclude the case by summing up to you and then inviting you to retire to
consider your verdict.

(SUMMING UP)

D **JUDGE CURRAN:** During the course of this case, you have heard how on 1st December of
last year, which was the third day of a contested trial in the magistrates' court, in the absence of
Mr Kirk who declined to come into court, the district judge found him guilty of the offence
under Section 2 of the Protection from Harassment Act of harassing Dr Tegwen Williams, a
E consultant psychiatrist. After that, the Defendant was given an opportunity of coming up into
court according to the prosecution's case, to hear sentence passed but declined to do so. The
prosecution's case is that apart from the sentence of 18 weeks' imprisonment which meant
because the Defendant had been in custody already for nine weeks, that he was immediately
F released as the rules of sentences of imprisonment are that you serve half in custody and the
second on licence in the community.

G Apart from a sentence of imprisonment, the prosecution's case is that the district judge
made a restraining order, a copy of which you have got. It is Exhibit 1 in this case and that
some days later, Mr Kirk broke the terms of the order by publishing the exhibit which you have
got before you on his website. The Crown's case is that although he was not physically in court
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A when the restraint order was made, Mr Williams the court clerk went down to the cells and saw
Mr Barker, the supervising custody officer, hand him a copy of the order. It appears to be the
Defendant's case that he disputes firstly that a restraint order was made; and secondly that he
B was given a copy of it and he told the police when he was interviewed that the first he knew
about the restraining order was sometime considerably later and that he had not seen it before
being shown a copy of it when he was being interviewed.

C That is the central issue in this case. Now you and I have been trying the case together
working as a team if you like. But as I told you at the start of the trial, the parts we have had to
play up until now have been quite separate and apart and will continue to be quite separate and
D apart from now on. Now that is because the law is my responsibility and for that reason when I
sum the case up to you now, I will do it in two parts. In the first part I will tell you the law that
you need to know for the purposes of the case and in the second part I will remind you about the
evidence. The reason for that is that you will have gathered that our parts are different. Mine
E concerns the law but you on the other hand concern all questions of fact and evidence and you
judge the evidence and you decide whether the case has been proved or not. You are not
required to resolve every point of detail. Simply those matters which enable you to decide
whether the charge on the indictment has been proved. I say that the facts of the case are for
F your judgment and so they are.

G In those circumstances remember that anything that I say when I deal with the evidence
is not to be taken as being anything that you need to follow. Because remember that if you
consider I am expressing a view about the evidence or emphasising a particular part of it, you are
under no obligation whatever to adopt any view or emphasis of mine unless it happens to
coincide with a view or emphasis that you have independently come to yourselves. When I deal
with the evidence, I am not going to repeat every single word of it and just remember that if I do
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A not mention a particular piece of the evidence that you consider is important, then as long as you
apply the legal directions that I give you, continue to have regard to it and give it the weight that
you think it deserves. All of that quite simply is because at the end of the day when it comes to
the facts of the case, it is your judgment that counts and nobody else's.

B Remember as I have said that you decide the case only on the basis of the evidence
which is being put before you. The first legal direction that I must give you concerns the burden
and standard of proof. These are criminal charges that the prosecution bring against the
C Defendant and the prosecution therefore has to prove it. The burden of proving the case is
always on the prosecution and the Defendant does not have to prove his innocence. The standard
of proof required of the prosecution is such that you cannot convict him unless you are sure he is
D guilty. What is called having the case proved beyond a reasonable doubt. If you are sure, your
verdict is guilty, if you are not sure, your verdict is not guilty. If you look at the indictment you
will see that he is charged with the single offence of acting in breach of a restraining order
contrary to the provisions of Section 5 of the Protection from Harassment Act.

E In particular, what he is alleged to have done is to be a party to material being placed on
the internet relating to Dr Williams which he was prohibited from doing by restraining order
made by the Cardiff Magistrates' Court on 1st December. You have got a copy of the order. It
F prohibits him, the Crown say, from contacting, approaching or communicating with Dr Williams
directly or indirectly by any means; from displaying or disseminating any material, photographic
or otherwise, relating to him; becoming a party to the display or dissemination of any material,
photographic or otherwise, in relation to him; becoming a party, or placing any information on
G the internet concerning him; or becoming a party to any material being placed on the internet
concerning him. So what the prosecution have to prove, to prove this charge is this: firstly that a
restraining order was made at the Cardiff Magistrates' Court on 1st December 2011; secondly

H

A that the order prohibited the Defendant from being a party to placing any information concerning
Dr Williams on the internet; that a copy of the order was served upon the Defendant; and that the
Defendant either placed the information about the doctor on the net himself or was a party to
B somebody else doing it and that he had no reasonable excuse for doing so.

As I have said, the central issues are: was there a restraining order and was it served on
the Defendant? That is what it amounts to. Was he a party to putting that information on the
net? In this case, the Defendant represented himself. That was his choice. Do remember the
C stresses and strains involved in defending yourself in a court of law. It is very important indeed
that you should make every allowance to the Defendant for the difficulty arising in doing that.
Secondly, he has not come back into court in the circumstances that I have told you about. It is
D essential that you also remember that you must not hold that against him either. Nor must you
regard that as being some kind of support for the prosecution's case either. The prosecution still
have to prove the case and you can only convict him if you are sure in the, of the matters that I
have already outlined.

E Now that is all that I need say to you about the law. The evidence can be dealt with quite
briefly. Michael Williams is a legal adviser employed by the court service. He was working in
Court 4 he told you, with District Judge John Charles. "It was the third day of the trial of
F Maurice Kirk who was charged with an offence under Section 2 of the Protection from
Harassment Act. The district judge ..." he said, "... retired to consider the case and then
returned to announce his verdict. He asked for the Defendant to be produced from the cells. I
was told by the cells on the phone he did not wish to be produced. He did not come into court.
G The district judge announced his verdict and gave his reasons. The prosecution made application
to the district judge for a restraining order. The Defendant was not in court. The district judge
asked me to contact the cells and explain to the officers that there was an application for a

A restraining order. The response from the officers was that he did not wish to attend court and did not want to make representations about the restraint order or sentence”.

“The district judge accordingly sentenced him and made the restraining order as part of the sentence. He then told me to make sure the order was personally served on the Defendant before the Defendant left the building. I produced the restraining order made. I waited for the staff to prepare it because it was originally in handwritten form by the district judge and it was typed out. I then went to the cells myself at about ten past two. I spoke to the supervisor Lee Barker and asked if I could serve the restraining order on the Defendant. Mr Barker said the Defendant was in the toilet, said he would prefer to serve the order himself, so the Defendant was not antagonised by my presence. I agreed, provided I could observe the order being served and he agreed and asked me to wait in an ante cell”.

“I heard Mr Kirk coming down the corridor and I heard Mr Barker say, ‘I have been asked to serve these forms on you’. I saw Mr Barker hand the forms to the Defendant myself. The other form was a copy of the options for paying the costs ordered by the district judge. I don’t believe the Defendant knew of my presence. I didn’t see him look in my direction at any time. I then left the cell area.” He said the proceedings he thought, that is to say the trial were concluded sometime between 12 and 1 and while, he said, the Crown Prosecution Service may have made oral representations to the district judge the order was drafted and made by him. He said to Mr Kirk, “This is the only time I have had to serve an order on a prisoner in the cells. I did so on the instructions of the district judge.” He said, “I have not been put up to this” and he denied the suggestion that the court had a total disregard for human rights.

He said, “I asked Mr Barker if I could serve the order personally. He told me that you were in the toilet and wanted to serve it himself as he did not want to antagonise him”. He said, “I do remember you being on crutches and I did see him give you the forms in the corridor”. Mr

A Barker, the supervisor said this, "I had a phone call from the court clerk asking if the restraining
order could be handed to Maurice Kirk. He wanted to come to the cell suite, custody suite to
give it to him. I agreed and he came to the cell area. He had the restraining order in his hand.
B Due to the fact that he was the court clerk in the case, I stated I would hand the restraining order
to Maurice Kirk so Maurice Kirk would have no contact with Mr Williams. He agreed. He said
he needed to witness me giving the restraining order to Mr Kirk. He stayed this side of the gate
and beyond it I gave the restraining order to Maurice Kirk."

C "It was a single sheet of paper with Restraining Order in bold letters across the top. I
proceeded to his cell and opened the door. Mr Kirk came to the door. I handed it to him and I
said, 'This is a restraining order from the court'. I closed the cell door and went back to Mr
D Williams and he left the area". He felt Mr Williams, I think he said 15 to 20 feet but then said
he was the distance from the witness box to the double doors at the back of the court away at the
time that the form was handed over. He said, "I didn't exchange the document handed me by
E Mr Williams for another one before giving it to Mr Kirk. Mr Kirk did not respond as I recall. I
am not sure if he said anything to me. There was no interaction between Mr Williams and Mr
Kirk, nothing at all. I didn't see what Mr Kirk did with it. He did take it from my hand. I shut
the cell door." He said, "There is a camera above the gate". He said, "Later on Mr Kirk refused
F to leave his cell and said he wanted to go back to the prison". He explained that he had finished
duty at 2.40 and he said when he was asked by Mr Kirk that "I said words to the effect, this is a
restraining order from the court. It was just the one sheet of paper that I gave to Mr Kirk".

G "Mr Williams thought it would be better for me to give it to him. There was a
conversation between the two of us and it was agreed that was, between myself and Mr
Williams." He said he thought Maurice Kirk was ... he said he thinks Maurice Kirk was in cell
three. It is an observation cell. There is a cell camera in there. He said if a prison is served with

H

A legal papers it would be recorded. “All I recall was Mr Williams handing me the sheet of paper with restraining order on it. There might possibly have been two sheets. Mr Williams rang me once. He said I did not record the service of the restraining order on that custody log that you have seen because Mr Williams said it would be on the court file that it had been served.”

B You heard from Detective Constable Paul Wilson about the Defendant’s arrest at Wood Green Crown Court. He was cautioned and he replied, “I thought this was dealt with. Just take me to the station. At least it’s a ride back to Barry” and the officer described him as being very compliant. You heard from Detective Constable Brinkworth. She was tasked by her Detective Sergeant to access the net and the Defendant’s website. She thought it was www.flyingvet.com. “I Google searched that and Maurice Kirk. I printed off Exhibit 2 which you have got and the two pages of the wanted poster are enlargements of the wanted poster which was on the print out.” She said, “I’ve got no personal knowledge of the matters contained in it and MAPPA stands for multi-agency public protection”. You heard finally from Constable Gunning who interviewed Mr Kirk in the presence of an appropriate adult, a Mr Jones, and when charged afterwards and cautioned Mr Kirk replied, “I know nothing whatsoever about the restraining order until today, despite asking for it. As for the poster, the magistrate did not allow the CPS to include it in the allegation”.

F “After the interview ...” said the officer, “... I spoke to three gentlemen in the foyer to identify potential witnesses. I made enquiries at the court to ascertain what time the restraining order was given to you” he said to Mr Kirk. “On 20th December ...” he said, “... the police received an e-mail from a Mr Dafydd Morgan asking for details of what was described in the e-mail as an arrest warrant and restraining order and an e-mail was sent to him telling him to tell Mr Kirk to apply to the court”. A Detective Constable Mintel examined the lap top. There was nothing found on it relating to this enquiry and he said the prosecution do not intend to rely on

A any evidence of anything found on the laptop. You have the Defendant's interview record and
you can take that with you when you retire to consider your verdict. The interview record
contains the Defendant's account of the matter to the police. It is something therefore that you
B should bear in mind when you consider whether or not the prosecution have proved the case. As
I have said, you must not in any way hold his absence against him and as I have said before you
must make every allowances for the difficulty involved in defending yourself in a court of law
and not allow yourself to be influenced by anything said or done by Mr Kirk while he was giving
C his, while he was talking or while he was asking questions of the witness.

Remember the three central issues in the case. Was there a restraining order? Was it
served on him? Was he a party to putting the material on the net? Those are the three points in
D the case. That is really all the case is about and that is why you have not been told anything
about what happened leading up to the conviction on 1st December because it is not relevant.
Finally, another legal direction, you have heard of course that the Defendant does have a
conviction. That is to say that conviction for the offence under Section 2 of the Protection from
E Harassment Act. You had to be told that because otherwise there was no explanation for the
making of the restraining order. But you must not in any way assume because of that conviction
that he is guilty of this offence. It is not proof or evidence of guilt on this offence. You decide
F the evidence, you decide whether or not he has committed this offence purely on the question of
the evidence before you. You only heard about the conviction because otherwise it would have
been incomprehensible that there was a restraining order.

When the jury bailiff has been sworn, I shall invite you to retire to consider your
G verdicts. It may be the first thing you would like to do is to order yourself something to eat from
the canteen.

(13.06pm)

H

A You will not be detained in the building late and if necessary the trial can easily be adjourned
until Tuesday morning, but with that further direction in mind, could I invite you to retire and
continue your discussions?

(15.41pm)

B

(JURY OUT)

(ADJOURNMENT)

(16.08pm)

C **JUDGE CURRAN:** I gather that the jury have reached a verdict and I am informed that Mr
Kirk has declined to come up to court.

MR EVANS: Yes, your Honour.

D

(JURY IN)

(16.09pm)

E

CLERK: Your Honour, three hours has elapsed since the jury first retired to consider their
verdict.

JUDGE CURRAN: Thank you.

CLERK: Would the foreperson please stand? Have the jury reached a verdict upon which
at least ten of you are agreed?

F

FOREMAN: Yes.

CLERK: Do you find the Defendant Maurice John Kirk guilty or not guilty of acting in
breach of a restraining order?

G

FOREMAN: Guilty.

CLERK: You find the Defendant guilty? How many agreed to that verdict and how many
of you dissented?

H

A **FOREMAN:** Ten agreed. Two dissented.

CLERK: You find the Defendant guilty with a majority of ten to two?

FOREMAN: Yes.

B **CLERK:** Thank you. Sit down please.

MR EVANS: Your Honour, there is an antecedent record to which Mr Kirk had referred to in some part. I wonder if your Honour has seen a copy of it?

JUDGE CURRAN: No, I have not.

C **MR EVANS:** I wonder whether your associate could provide you with a copy? **(handed)**

D **JUDGE CURRAN:** Maurice John Kirk born 12th March 1945 in Taunton; 67 years of age; and he has 15 convictions for some 25 offences. They are spanning from 1978 until December of last year. There are offences of violence and assault occasioning actual bodily harm in 1978, moving through a number of public order offences, driving offences. The item at item 12 is an offence of contempt of court in June 2010 from this Crown Court and had a sentence of 28 days' imprisonment imposed. There was further public order offences in August 2011 and there is of
E course the harassment conviction from 1st December 2011 for which as the jury have probably heard an imprisonment term of 18 weeks was imposed, together with the restraining order. There was on the same day, a conviction for common assault and a failure to surrender to
F custody and on 2nd December at the Highbury Corner Magistrates' Court, there was a conviction for racially aggravated harassment, a public order offence with a racial aggravation, as well as another failing to surrender to custody at the appointed time. Your Honour would you like me to go into any other detail of the other items on the record or read them into the public record?
G They do span quite a number of years.

H

A **JUDGE CURRAN:** Would you inform Mr Kirk please or can somebody inform Mr Kirk that I intend to sentence him, that he has been convicted and that I intend to sentence him now. So if he wants to come into court to make any representation to me, this is his opportunity of doing so.

B **MALE ONE:** Yes, your Honour. Can I leave to pass that on?

JUDGE CURRAN: Please do.

C **MR EVANS:** Your Honour, there is the Crown's application for costs as well although I should probably wait until Mr Kirk comes into court if he does so. He may wish to have something to say about that.

JUDGE CURRAN: What is the figure?

MR EVANS: The average figure from the schedule provided to prosecutors is £3,500.

D **(16.13pm)**

(PAUSE)

(16.14pm)

E **JUDGE CURRAN:** Am I right in saying that there was subsequently an appeal by Mr Kirk against the conviction for the offence under Section 2 of the Protection from Harassment Act. The appeal was dismissed; the conviction upheld; and the order remains in force.

F **MR EVANS:** Your Honour, yes. And the Crown do not seek to vary or extend the order. It is until further order and seems to me to cover all the appropriate type of behaviour.

(16.14pm)

(PAUSE)

(16.16pm)

G **JUDGE CURRAN:** I do intend to deal with the case this afternoon, members of the jury. I should say that although you are welcome to stay while I sentence Mr Kirk, whether he comes back into court or not, of course you are not under any obligation to do so. If any of you want to

H 28

A go home, please carry on. Thank you very much for the care and attention that you gave the case.
Some of you I know will have finished your jury service. If so you leave with the thanks of the
community and the court service for the important work that you have done. Those of you who
B have not, well you will just have to be back here on Tuesday morning, like me. There we are.

(16.17pm)

(PAUSE)

(16.18pm)

C **MALE ONE:** (Inaudible) he wishes to remain in his cell.

JUDGE CURRAN: Thank you very much. Maurice John Kirk had been convicted by the
jury of an offence contrary to the provisions of Section 5 of the Protection from Harassment Act.

D The conviction arises from his being convicted at the Cardiff Magistrates' Court before District
Judge John Charles on 1st December 2011. He was convicted then of an offence under Section 2
of the Protection from Harassment Act having pursued the course of conduct which amounted to
E harassment of Dr Tegwen Williams, a consultant forensic psychiatrist who is based at the
Caswell Clinic near Bridgend. The background to the offence appears to be that sometime ago
Dr Williams had been responsible for the treatment of Mr Kirk. It appears that somehow Dr
Williams' diagnosis of Mr Kirk of suffering from a mental illness of some kind had been
F allowed to fall into Mr Kirk's hands or had been brought, in some way brought to his attention
because he was subsequently able to quote from Dr Williams' report.

That has led to something of a campaign of harassment against Dr Williams which led to
the conviction in the magistrates' court. At the magistrates' court a restraining order was applied
G for by the Crown Prosecution Service and although a draft of the order was handed by the
prosecutor to the district judge, it was in fact the district judge himself who finalised the order. A
copy of it was then taken down to the cells and served on Mr Kirk who was clearly aware of its

A contents. Some days later, in complete defiance of one of the prohibitions contained in the order,
he caused to be published on the internet on his web site further abusive material directed at Dr
Williams. As a result of that, he was charged with this offence and the trial has just been
B concluded. The offence crosses the custody threshold and requires nothing short of an immediate
sentence of custody.

Harassing somebody, particularly this particular doctor who is in a very difficult position
having had the misfortune of having treated the Defendant in the past, is a very serious matter
C and there is no doubt at all that Mr Kirk, as the behaviour during the course of this trial has
demonstrated, is capable of acting in a highly intimidating and threatening and abusive manner.
For that reason his conduct was obviously a source of great concern to the doctor. For that
D reason, the offence involving a bare faced breach of the order very shortly after it had been made
requires nothing short of immediate custody. Having said that, I also bear in mind that this
offence does not involve an actual attempt to confront the doctor or go to his place of work but
the mere publishing of offensive material on the net, on the Defendant's own website.

E For that reason, therefore, I am not required to go anywhere near the maximum sentence
which is open to the court for offences under this particular section of the act which is no less
than five years' imprisonment. As it is, I bear in mind the age of the Defendant, the fact that he
F has been in custody for a considerable period of time, bail having been refused because of the
likelihood of further offences being committed. In the result, the appropriate sentence is one of
nine months' imprisonment. The Defendant will serve half of that sentence in custody, that is to
say four and a half months. The second half in accordance with the usual directions by
G Parliament will be spent on licence in the community. So far as the half of the sentence the
Defendant has to serve in custody is concerned, that is to be reduced by the number of days that

A he spent in custody on remand in connection with this matter up until now. I think it may now
be 133 days. I am not sure.

CLERK: (Inaudible).

B **JUDGE CURRAN:** Well as of yesterday, it was 131, so today it is 132. It is to be reduced by
the 132 days that he has spent in custody on remand in connection with this matter up until now,
and the restraining order obviously remains in force. I sentence the Defendant in his absence
because he has declined to come back into court and since there may well be as there very often
C is by Mr Kirk an application for leave to appeal against this conviction to the Criminal Division
of the Court of Appeal, I would make it clear in my sentencing remarks which may be drawn to
the attention of the judge receiving the application for leave, that consideration needs to be given
perhaps to the way in which the Defendant behaved throughout the trial, which the transcript
D would reveal and indeed the repeated offers which were given him this morning to come back
into court and to give evidence and to call witnesses if he wanted to.

All of which he declined. As a result of which I was driven to conclude that there was no
E alternative but to continue the case without his physical presence. That concludes the
proceedings. I considered the question of costs. I know nothing at all about the Defendant's
means. I am aware of the fact that in view of his age, I do not know that he is any longer in
F employment. He was a veterinary surgeon. I shall order him to pay a contribution of £1,000
towards the costs of the prosecution. I reduce it from the full figure of £3,500 because I do not
know anything about the Defendant's means and that is in no way meant to be critical of the
prosecution who have perfectly properly brought this case to the court. Was this a defence
G election for trial?

CLERK: It was your Honour. Yes.

H

A **JUDGE CURRAN:** I am informed it was. The fact that I have limited the amount of costs is
not in any way meant to be critical of the prosecution at all. This was a case that was properly
B brought but knowing nothing as I do about the Defendant's means, and in the light of his age I
have limited the amount for those reasons.

MR EVANS: Yes.

JUDGE CURRAN: And I shall grant him three months to pay. If he is not able to pay within
that time, he will have to make the appropriate application to the magistrates' court which will
C be the collective court. There we are ladies. Thank you very much. That is the end of it. The
effect of the order, incidentally, I might say because Parliament requires that only half of a
custodial sentence is spent in custody, is that I think that he likelihood is that Mr Kirk will be
D released if not today then very shortly. Is that right?

MR EVANS: Possibly your Honour. Yes. Days on remand (inaudible).

JUDGE CURRAN: Hmm?

MR EVANS: Possibly. Looking at the number of days on remand.

E **JUDGE CURRAN:** Yes. Thank you very much. There we are.

(16.26pm)

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B

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

D

E

Signed: Mendip-Wordwave Partnership

F

G

H