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**IN THE CROWN COURT
AT CARDIFF**

Indictment No: T20097445

The Law Courts
Cathays Park
Cardiff
CF10 3PG

16th July 2009

Before:

THE RECORDER OF CARDIFF

R E G I N A

- v -

MAURICE J KIRK

MR R TWOMLOW appeared for the Prosecution.

MR D LEATHLEY appeared for the defendant.

PROCEEDINGS

Tape transcription by **Mendip-Wordwave**
(Official Court Reporters to the Court)
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PROCEEDINGS

(11.27am)

THE CLERK: Case listed for application for bail, Maurice Kirk.

THE RECORDER: Yes. Mr Leathley, I am told – I mean technically we are on the video link – he is refusing to come to the videolink.

MR LEATHLEY: He is, my Lord.

THE RECORDER: So I cannot hear an application.

MR LEATHLEY: No, you cannot, my Lord.

THE RECORDER: Have you been able to get instructions to act for him?

MR LEATHLEY: My Lord, I am instructed by Mrs Kirsty Kirk.

THE RECORDER: But, as you know, although I have got every sympathy with Mrs Kirsty Kirk, she is not able to give you instructions.

MR LEATHLEY: No. My Lord, I can do only this. You are absolutely right. There is no way, legally, I am instructed to act for Maurice Kirk today. I do not, therefore, wish to prejudice any lawyer who may in the future act for Mr Kirk by making an application on his behalf without instruction. That would be a contravention of the Bar Code.

THE RECORDER: Yes.

MR LEATHLEY: However, certain matters have come to light, due to not only the kind offices of your Lordship but the kind offices of one of your court associates and that is that your Lordship has formed the preliminary view that it may be of assistance to the court, and for all we know, Mr Kirk, if there was a medical report on his state.

THE RECORDER: Yes.

MR LEATHLEY: I can tell you that his loving wife is genuinely concerned, if not about the state of his mind but the state of his health. He is a 64-year-old gentleman who is unaccustomed

A to being incarcerated and Mrs Kirsty Kirk, who is, of course, like me, not qualified in matters of
psychiatry but, as a wife of some considerable, well, 17 years of observation of her partner Mr
Kirk, she has noticed a physical disintegration in his well-being and, my Lord, if we can do this
B perhaps today, I think Mrs Kirsty Kirk is going to see her husband for a family domestic visit
this Saturday. I think that would be the opportunity that she either will or will not succeed in
persuading him that his best interests lie in legal representation. On the proviso that he might
elect to have a legal representative, without being impertinent as to guess who that legal
C representative may be, if appropriate, may I invite your Lordship to make an indication that
because this is Section 5 (1) Firearms Act offence with a minimum sentencing power, unless
there are exceptional special circumstances, of five years, that this man, if for no other reason but
the severity of the charge, who is now unemployed because I gather he has been struck off from
D the Roll of Veterinary Surgeons for allegedly bringing it into disrepute, the practice, he is
ineligible to work as a vet. He has no source of income, so he is an unemployed gentleman
facing five years' imprisonment in theory, who has now, in your Lordship's eyes if nobody
E else's eyes, raised considerable concerns about his either medical or psychiatric condition and, in
fact, if for no other reason he may not be in a position to pay for a report commissioned or might
be commissioned. So I invite your Lordship to make an indication that this honourable court
would look in favour upon his being granted legal assistance by The Legal Services Commission
F in the preparation of this case which involves very intricate points of law at first blush, my Lord.

THE RECORDER: Yes. I agree.

MR LEATHLEY: I am very grateful.

G **THE RECORDER:** I am sorry that he will not engage in the process. I have read his
correspondence.

MR LEATHLEY: Yes.

A **THE RECORDER:** I am satisfied, as a result of his refusal to engage and what I have read, that I must order a psychiatric report in this case because it is at least questionable as to whether he is capable of representing himself or not and I have to determine whether he is fit to plead.

B **MR LEATHLEY:** Yes.

THE RECORDER: So I will order a psychiatric report. I am told there are question marks over his medical condition as well.

MR LEATHLEY: Yes.

C **THE RECORDER:** And I, therefore, also order a report from the prison doctor---

MR LEATHLEY: Thank you.

THE RECORDER: ... as soon as possible as to his medical condition.

D **MR LEATHLEY:** Thank you.

THE RECORDER: What are the dates for service of papers, Mr Twomlow? What is the date that is set for when the full bundle will be served.

MR TWOMLOW: Papers and indictment by the 17th August. PCMH 1st September.

E **THE RECORDER:** Is there any prospect of shortening that date?

MR TWOMLOW: I have not taken instructions in respect of that. I have seen today a recently obtained ballistics report.

F **THE RECORDER:** At the moment the position on the papers, I have read what I can, raises a number of issues, potentially, but I appreciate I have not got a full set of papers. I am anxious that this be considered fully on the basis of all the evidence which the prosecution wish to rely on.

G **MR TWOMLOW:** Yes.

THE RECORDER: And by someone who will be able to focus their mind on what actually is relevant, as opposed to, I am afraid, what Mr Kirk is writing about.

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A **MR TWOMLOW:** My Lord, if one goes through the steps as to what has to be proved to prove this offence in front of a jury, then 90% perhaps of what is in the papers does not go to those issues.

B **THE RECORDER:** No.

MR TWOMLOW: There may be issues in regard to those, depending on the view taken of the reports but there may not but, in terms of, I entirely agree with what your Lordship says. There is not a great deal, as far as proof of this offence is concerned, I think, to be done. I know enquiries have been made and I know the officer-in-the-case has been very assiduous. She has been here this morning since ten o'clock and I have had a conference with her for an hour.

C **THE RECORDER:** Yes.

D **MR TWOMLOW:** May I just take instructions in relation to that?

THE RECORDER: Yes. Yes. In relation to the court ordered reports, the psychiatric report on the usual basis, to assess fitness to plead.

MR LEATHLEY: Thank you, my Lord.

E **THE RECORDER:** And we will instruct someone. I can only appeal to Mrs Kirk to use her best endeavours to ensure that her husband co-operates. If he refuses to co-operate the consequences are likely simply to be that it is harder to make any progress.

F **MR LEATHLEY:** My Lord, I am very grateful. May I say this.

THE RECORDER: That applies to both the medical report and the psychiatric report.

MR LEATHLEY: Yes. On the basis that Mrs Kirsty Kirk is successful at a domestic visit this Saturday, in perhaps advising her beloved husband of what may or may not be in his best interests, can I be impertinent enough to suggest that this matter today, which was listed as an application for bail but cannot, because of lack of instruction, be an application for bail, that this matter is adjourned to either Monday or Tuesday of next week on the same basis, on the proviso that Mrs Kirsty Kirk is successful in persuading her husband where his interests lie and so that

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A an application with his assent could take place upon proper legal instruction on either Monday or
Tuesday of next week over the link, say, 9.30 as I am in a trial---

THE RECORDER: I think what I should do is this. I will indicate that if solicitors are able to
B be identified a Representation Order will be granted forthwith in favour of such solicitors as Mr
Kirk wishes to instruct and a bail application may be listed at short notice---

MR LEATHLEY: Thank you, my Lord.

THE RECORDER: Before me.

C **MR LEATHLEY:** Thank you, my Lord.

THE RECORDER: In the event that either he instructs lawyers---

MR LEATHLEY: Yes.

D **THE RECORDER:** ... or he is prepared to engage with the process. I cannot stop, at the
moment, him representing himself, nor would I wish to do so.

MR LEATHLEY: No.

THE RECORDER: A question mark is raised in my mind as to whether he is psychiatrically
E able to represent himself by his behaviour today and what I have read in the correspondence but
I have not determined that issue. But what I am very anxious to avoid, because of the effect on
other cases in the list and, of course, I think I have 17 or 18 cases in the list today and the fact of
F this being listed and then us not being able to make progress has cost public money,
inconvenience to other litigants, et cetera, is I do not want a repetition of this.

MR LEATHLEY: No.

THE RECORDER: So I do not want it listed as a bail application if he is not going to engage
G and he is not going to instruct lawyers, because it is simply using up public money.

MR LEATHLEY: Very well. I agree.

THE RECORDER: So I will not fix a date but it can be listed at short notice.

H **MR LEATHLEY:** Thank you, my Lord.

A **THE RECORDER:** ... if he really wants to make an application, either himself or through lawyers, on a not engage basis.

B **MR LEATHLEY:** I am very grateful and, purely speaking as an amicus, I will relay, via Mrs Kirsty Kirk, Mr Twomlow's timetable that papers are to be served by the 17th August and that the plea and case management hearing has a listing on the 1st September and I will obviously encourage my learned friend Mr Twomlow to serve upon Mr Kirk in prison the ballistics report so, if he wants to act for himself, he has got full disclosure of what I think, in many lawyers' eyes, would be the critical document in the case. Is this a Lewis gun that is capable of firing? Is it a firearm within The Firearms Act or is it, for example, a prop or replica, incapable of firing? That is, I think, the nub of the issue and Mr Kirk needs to see the ballistics report.

D **THE RECORDER:** There may be a point about antique or collectors item as well.

MR LEATHLEY: Yes, there is.

THE RECORDER: But that certainly seems to be at the heart of it.

MR LEATHLEY: Yes, I have identified---

E **THE RECORDER:** And, at the moment, I cannot come to any conclusions but we are not at the trial, of course.

F **MR TWOMLOW:** As far as acceleration of the dates from the 17th August, there are two matters that need to be dealt with. One, perhaps, is not vital at this stage, which is the statement from the Birmingham Proof House, which will not be forthcoming until the 6th August, although we anticipate, because of investigations that we have already made with the London Proof House, that this is not a deactivated weapon.

G **THE RECORDER:** Yes.

MR TWOMLOW: And to some extent the London Proof House can assist us on that but it has to go to the Birmingham one to be seen and tested.

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A **THE RECORDER:** I understand. But we could probably have a plea and case management hearing without the Birmingham information.

B **MR TWOMLOW:** Yes, I think that is the case. However, the person who bought the item is not available for three weeks from now, which is the same 6th or 7th August. He was away for four weeks.

THE RECORDER: I think you are getting further instructions.

C **MR TWOMLOW:** The person who sold him the item, rather than the person who bought it. My mistake.

THE RECORDER: So, can I bring it forward? Would you be able to serve everything other than the Birmingham Proof House's information by the 6th August?

D **MR TWOMLOW:** The person who sold the gun to Mr Kirk is not back for three weeks from now, which is going to be the 6th or 7th August.

THE RECORDER: Oh, I see. So papers cannot be served till the 17th.

MR TWOMLOW: Well, it seems to me that that is a greater difficulty, in terms of completion.

E **THE RECORDER:** Yes, I agree. All right. Well, the date will have to remain that papers are to be served by the 17th August and we have a date for a plea and case management hearing?

MR TWOMLOW: 1st September.

F **MR LEATHLEY:** I, although not instructed, can say this for the record. There is nothing unreasonable in that timetable, given the fact that scientific statements have to be collated by the crown.

G **THE RECORDER:** I understand. Thank you. So the dates will remain as they are. I have indicated that I would listen to a bail application or another judge. I have to say something about my personal involvement in the case in a moment. I would listen to a bail application or another judge would be able to listen to a bail application at short notice, if he would engage or if he would instruct. It seems to me that a psychiatric report is essential and we will see where we go.

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A **MR LEATHLEY:** Yes.

THE RECORDER: That is almost as far as I can take things today but I have to deal with one other matter and then I will order a transcript of what has transpired for today.

B **MR LEATHLEY:** Thank you.

THE RECORDER: Although I am conscious that would cost public money but I know the consequences, from Mr Kirk's perspective, if I do not.

C **MR LEATHLEY:** I would have requested the same, so Mr Kirk can be aware of what has been said.

THE RECORDER: Well, we have got a prison officer putting his hand up on the video. Shall we just see?

D PRISON OFFICER: All attempts to persuade Mr Kirk to attend court have failed.

THE RECORDER: Very well. Thank for all your efforts. We are dealing with some aspects of the case in his absence. I am ordering a transcript of what has transpired, which he will get in due course. For the present he is remanded in custody. Thank you.

E PRISON OFFICER: Thank you.

MR LEATHLEY: Thank you, my Lord.

THE CLERK: Thank you Cardiff.

F **THE RECORDER:** I now have to deal with another aspect of this case, which I should put on the record. He is not here to hear it, I cannot do anything about that, because he would not come. I have, like many of my colleagues, had dealings with Mr Kirk in the past. The position, by my recollection, is as follows. I tried a case in which he was accused of dangerous driving. I formed the view that the evidence called by the prosecution was insufficient to secure his conviction by a reasonable jury properly directed and I, therefore, directed that the jury should find him not guilty. I am afraid that, for my pains, I received abuse from Mr Kirk at the material time, on the basis that I was only doing this as part of a conspiracy in order to cover up the

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A wrongdoings of the police and, in fact, I have a pretty clear recollection that some of that abuse
took the form of foul language directed at me, which I did hear, but when I asked him if he
would like to repeat what he had just said he did not say what he had said the first time. I
B ignored that but I am afraid his behaviour before the jury, to some extent, was such that I could
not overlook it altogether. I, therefore, committed him for contempt. He claimed to have had a
heart attack, I believe, as a result of that and that, I think, was not proved on any medical
intervention. My recollection is, in the end, because of the trouble he was causing to the prison
C authorities, I substituted a fine for any sentence of imprisonment. Again, for my pains, I was,
therefore, excoriated on his website. In fact, I had sought to do nothing other than treat him with
courtesy and fairness but that is how he had behaved.

D You will understand, Mr Leathley, that I am a man who prides himself on patience and
humanity and I am in no way, shape or form biased against him.

MR LEATHLEY: No.

THE RECORDER: Particularly not in the context of a case which turns on fine points as to
E whether a weapon dating from The Great War is a firearm within the meaning of the Act or not.
But, of course, Mr Kirk may object to me having anything to do with his case. I, therefore, put
all of that on the record. It is then a matter for him to make such points through his lawyers or
F by himself as he wishes to make. I order a transcript of this hearing so that he is not
disadvantaged and, of course, the prosecution can help me as to whether or not I should recuse
myself or not. There are considerable difficulties, given Mr Kirk's website, in my identifying
judges who have not been attacked thereon. Most of them, I should think, like me, treat Mr Kirk
G as an attention-seeker who is his own worst enemy and are not biased against him because of
what he says about us. That is my view and I do not feel that a concerned bystander would feel
he would not get a fair hearing from me. But, at the end of the day, it is what Mr Kirk thinks
that we would have to listen to. I think that sums up my position.

A **MR LEATHLEY:** My Lord, on the basis that Mr Maurice Kirk may be reading those words in
the not too distant future on a transcription, it is the opinion of this lawyer that the issues in this
case are of a technical nature and that it is something that is not foreseeable at this stage that a
B judge could be distracted by anything other than the technical machinations of Section 5 of The
Firearms Act 1968 in advising a jury, if empanelled at some possible future trial, inconceivable
that a learned judge on the Wales and Chester Circuit could advise the jury that the law is
anything but that which it is, purely out of spite or potential spite for a website.

C **THE RECORDER:** Well ---

MR LEATHLEY: The other factor, my Lord, if I can be allowed to finish.

THE RECORDER: Of course.

D **MR LEATHLEY:** Is that Mr Maurice Kirk has got a website on GoogleSearch and he runs the
risk, by having a website, that any juror of this parish could equally have access and have formed
views. Even if the case were transferred to the Bahamas it is conceivable that GoogleSearch
might reveal that which your Lordship has entertained pertaining to him.

E **THE RECORDER:** Yes.

MR LEATHLEY: He is, on his own admission, somebody who has sought attention to
illustrate points. It is inconceivable at this stage that there would be any criticism of your
Lordship having been seized of a bail application at this stage.

F **THE RECORDER:** Well, I could not even determine it but, had he engaged---

MR LEATHLEY: It is a matter for Mr Kirk on Saturday.

THE RECORDER: Had he engaged I would have dealt with that matter first. I considered the
G possibility of trying to transfer it to another judge but it was not practically possible, in the
circumstances and, of course, the difficulty is that, and I think I am right but I do it from
memory, it is a long time ago and I do not visit Mr Kirk's website, it was drawn to my attention,
my having tried his case when I was a Recorder and, therefore, a part-time judge, that if one
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A GoogleSearched for me, with a view to ascertaining whether I was suitable for instruction in planning matters or whatever, the first thing one got was Mr Kirk's comments that I was corrupt.

MR LEATHLEY: Yes.

B **THE RECORDER:** Obviously, that is distressing. It is also not true, of course. But that is the background and if, in those circumstances, he objects to me having to deal with his case, we will have to make such arrangements as we can.

C **MR LEATHLEY:** Potentially, if Mr Kirk gives his blessing on Saturday (a) to being legally represented, (b) as to the identity of whoever his legal representative may be, all of which is still speculation and up in the ether, (c) we can then move on to whether he would want the case listed in South Wales or perhaps another court, because of perceived bias. That point, of course, is not being taken on any instruction today and, hypothetically, if the matter were to be a bail application, given those judges available, I would invite your Lordship to leave an opening, if at short notice, if Mr Kirk gives his blessing, next week in your Lordship's court.

D **THE RECORDER:** Yes, well, we will certainly try to get it on but, if I may be so bold, my chief concerns at the moment are his psychiatric health and ability to give instructions.

E **MR LEATHLEY:** Of course. That is understood, my Lord.

THE RECORDER: His medical condition.

F **MR LEATHLEY:** Yes.

THE RECORDER: And the efficient use of court resources.

MR LEATHLEY: Yes.

THE RECORDER: To ensure that we can process this case as soon as possible.

G **MR LEATHLEY:** But, for the record, this case will be argued without reference to personalities, as I see it. It is not a case to do with moral turpitude necessarily. It is to do with strict liability under The Firearms Act.

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A **THE RECORDER:** Well, I smile as I say it, but you go beyond yourself because you do not, at the moment, have instructions.

MR LEATHLEY: Yes, I know.

B **THE RECORDER:** And I have to wait to see what happens.

MR LEATHLEY: But, as a dispassionate lawyer evaluating what I understand the case to be, through the kind offices of both Mr Richard Ace and Mr Richard Twomlow, it would appear to be a case, there may be strict liability depending upon what the item is.

C **THE RECORDER:** That is my view of the papers, I agree with you, but at the moment we await Mr Kirk.

MR LEATHLEY: So it may not be a case that can be fought, won or lost with personality issues uppermost.

D **THE RECORDER:** It looks like it but we will have to see what Mr Kirk thinks.

MR LEATHLEY: Yes, my Lord.

THE RECORDER: Thank you.

E **MR TWOMLOW:** My Lord, your Lordship's remarks contained a number of facts. I was unable to make a note of them. If Mr Kirk is to have a transcript can the crown as well?

THE RECORDER: Yes, the crown as well, of course. I direct that it be provided to the crown.

F **MR TWOMLOW:** Thank you very much indeed.

THE RECORDER: I am anxious that the fullest information, although I must stress I rely on memory, I am anxious that the fullest information as to my position is known to the crown and to Mr Kirk.

G **MR TWOMLOW:** Yes.

THE RECORDER: Similar points would probably be able to be made by others and, although I am not asking anybody to visit his website and, no doubt, it changes over time, the problem is

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A that if accusations of corruption, malpractice et cetera are made against the judiciary on
websites, as Mr Leathley points out, it is publicly available.

MR TWOMLOW: Yes.

B **THE RECORDER:** It makes no difference to me. You simply have to take that sort of thing
in your stride and you know it is not true but the perception to jurors and so on, if we end up
with a jury trial, of the sort of publicity, I have to also consider so that we can guard against a
jury being prejudiced against him because of what he says on his website. But that is for the
C future.

MR LEATHLEY: At a future trial the jury would be warned only to decide issues in the form
of evidence before them and, in fact, they would be warned not to go on websites.

D **THE RECORDER:** Yes, they would. Thank you. I cannot impose any reporting restrictions
but I do not think anybody is here from the Press. Thank you.

MR LEATHLEY: Thank you, my Lord.

E **THE RECORDER:** That concludes the matter. I am sorry, Mrs Kirk. Nothing else I can do
about it today. I am conscious of the need to consider his health and psychiatric health. I am
doing what I can. My own experience you have heard about. He can, I fear, be his own worst
enemy. I am only trying to help. The prosecution are entitled to prosecute. I have to deal with it
fairly. I need assistance. He would not engage today. There is nothing I can do in those
F circumstances. I am doing the best I can to ensure he has representation and to make sure that I
can tell that he is or is not able to look after his own interests. Thank you. He is, sadly,
remanded in custody for now. Thank you.

G That is the end of the point at which we need a transcript. Thank you.

(11.51am)

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

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Signed: Mendip-Wordwave Partnership

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