

6. Prison Officer David Rogan was in the act of committing an offence of theft of the Appellant's passport and legal papers, or was in the act of aiding and abetting, counselling or procuring it, along with Prison Officer Reid and other officers in the prison reception under section 8 of the Accessories and Abettors Act 1861, and/ or was conspiring to do so under section 1 of the Criminal Law Act 1967.
7. The Appellant had "reasonable grounds" for suspecting that Prison Officer David Rogan was in the act of committing an offence of theft of the Appellant's passport and legal papers, or was in the act of aiding and abetting, counselling or procuring it, along with Prison Officer Reid and other officers in the prison reception under section 8 of the Accessories and Abettors Act 1861, and/ or was conspiring to do so under section 1 of the Criminal Law Act 1967.

PARTICULARS OF "REASONABLE GROUNDS"

- (1) When the Appellant had previously been released from HMP Cardiff in August 2013, he was summarily and foreably ejected from the prison by prison officers, and wasn't allowed to collect his legal papers and belongings from his cell, nor was his property, including his passport and legal papers, that had been retained in the prison reception returned to him on his previous release from custody.
- (2) On a number of subsequent occasions, Mr. Jeffrey Matthews had attended at the prison reception with the Appellant, and had spoken to Prison Officer David Rogan who had denied any responsibility or knowledge about the Appellant's passport and legal papers.
- (3) At the time of the incident, Prison Officer David Rogan was in the vicinity of the "vehicle lock" area of the prison when the Appellant approached him.
- (4) Just after the Appellant's arrest by PC Andrew Mason and PC Victoria Howe, his remaining chattels including his jacket were returned to him by a Prison Officer in a plastic bag, but his passport and legal papers weren't returned and were thereby continued to be unlawfully retained in the prison reception contrary to section 1 of the Theft Act 1968 and the Torts (Interference with Goods) Act 1977, having already previously been stolen and/or wrongfully converted and/or interfered with.
- (5) PC Watts was also the driver of the vehicle taking the Appellant to the police station after his arrest, and it now transpires from evidence given before the Magistrates' Court that he didn't discuss this with the other 2 arresting officers, and the Appellant believes that he had previously contacted the prison to warn them that the Appellant

was on his way so that he could be deliberately obstructed in retrieving his passport and legal papers from the prison authorities.

- (6) The Appellant believes that this is the reason why Prison Officer David Rogan was in the vicinity of the “vehicle lock” area of the prison.
 - (8) The Appellant had previously been assaulted by Prison Officer David Myers who had been in the habit of kicking him in the legs.
8. In addition, when the Appellant was being conveyed to the Cardiff Magistrates’ Court on 10 December 2013, he witnessed Prison Officer D. Gould in the reception area of HMP Cardiff trying to throw away an application to release his passport and legal papers, and when he protested, the said Prison Officer Gould assaulted the Appellant in the presence of Wing Governor Sarah Rowe.
 9. The court will be invited to draw such adverse inferences as it thinks fit relating to the failure to return to the Appellant his passport and legal papers when his other remaining chattels were returned to him after his arrest.
 10. In all of the circumstances, there has been a concerted and malicious attempt by prison officers and governors at HMP Cardiff to deprive the Appellant of his passport and legal papers and to impede his access to the court by destroying legal documents relating to the Appellant.
 11. The Appellant had “reasonable grounds” for believing that it was necessary to arrest Prison Officer David Rogan in order to thereby “prevent loss or damage” to his passport and legal papers, and/or to prevent Prison Officer Rogan “making off before a constable could assume responsibility for him”, and/or that it appears to the Appellant that “it was not reasonably practicable for a constable to make an arrest” instead and it was therefore “necessary to arrest” Prison Officer Rogan accordingly.

PARTICULARS OF “REASONABLE GROUNDS”

- (1) The Appellant believed that it was necessary to arrest Prison Officer David Rogan in order to thereby “prevent loss or damage” to his passport and legal papers and to thereby obtain their return to him from the custody and control of the reception at HMP Cardiff.
- (2) The Appellant believed that it was necessary to arrest Prison Officer David Rogan in order to prevent him making off before he could be handed over and arrested by a constable.

(3) There were no constables immediately in the vicinity to which the Appellant could have requested that Prison Officer David Rogan should be arrested for an offence of theft of the Appellant's passport and legal papers, and/or aiding and abetting, counselling or procuring it, along with Prison Officer Reid and other officers in the prison reception under section 8 of the Accessories and Abettors Act 1861, and/ or for conspiring to do so under section 1 of the Criminal Law Act 1967.

12. In the premises, the Appellant's appeal should therefore be allowed and his conviction for Common Assault against Prison Officer David Rogan at Cardiff and the Vale Magistrates' Court on 10 December 2013 should be therefore reversed under section 48(2)(a) and (c) of the Senior Courts Act 1980.

Dated 27 December 2013

Signed

A handwritten signature in blue ink, appearing to read 'Maurice John Kirk', written over a horizontal line.

MAURICE JOHN KIRK
Appellant

IN THE CARDIFF CROWN COURT

Case Ref:

B E T W E E N:

MAURICE JOHN KIRK Appellant

- and -

DIRECTOR OF PUBLIC PROSECUTIONS
Respondent

DEFENCE STATEMENT

Maurice John Kirk,
Number A7306AT
HMP Cardiff,
Knox Road,
Cardiff
South Glamorgan
CF24 0UG
Appellant