

A

B

C

D

E

F

G

H

IN THE CROWN COURT
AT CARDIFF

Indictment No: T20097445

The Law Courts
Cathays Park
Cardiff
CF10 3PG

3rd September 2009

Before:

HIS HONOUR JUDGE VOSPER OC

REGINA

- v -

MAURICE KIRK

MR R TWOMLOW appeared for the Prosecution.

The Defendant appeared in person.

ALL PROCEEDINGS

Tape transcription by **Mendip-Wordwave**
(Official Court Reporters to the Court)
3 Chinon Court, Lower Moor Way, Tiverton, Devon EX16 6SS
Tel. 01884 259580 : Fax 01884 250235

A (11.26am)

JUDGE VOSPER: The next case is the case of Mr Kirk. Mr Twomlow, you prosecute?

B **MR TWOMLOW:** Yes.

JUDGE VOSPER: Is Mr Kirk represented?

MR TWOMLOW: I do not think he is but I do not know.

C **JUDGE VOSPER:** Well, there is no indication that he is. I was given this morning, just as I came in to start the list, a report that has been prepared upon Mr Kirk.

MR TWOMLOW: I have not seen that.

JUDGE VOSPER: Well, I have not read it either.

D **MR TWOMLOW:** Your Honour, can I also give you – is your Honour going to adjourn?

JUDGE VOSPER: I was going to rise for a minute just to read.

MR TWOMLOW: Can I give you a copy of a case summary which I have completed for, I hope, the assistance of the court and of Mr Kirk, who is not represented.

E **JUDGE VOSPER:** Thank you. That is very helpful.

MR TWOMLOW: Mr Kirk has not yet had that, obviously, but I have got a copy for him this morning.

F **JUDGE VOSPER:** Is he being brought to court this morning, do we know? He is here. Right.

MR TWOMLOW: He is currently under a Section 35 Order at The Caswell Clinic.

JUDGE VOSPER: I have got two documents here. I just want to check they are not copies of the same document. It looks like they may be. Yes.

G **MR TWOMLOW:** Your Honour, I do not know if it would assist if Mr Kirk were to be brought to court while your Honour has adjourned.

JUDGE VOSPER: That would assist.

A **MR TWOMLOW:** I could then give him a copy of the case summary and he would have a chance to read it before the case begins, which may be of assistance.

B **JUDGE VOSPER:** Yes, that would assist. It just occurs to me, you do not have a copy of the report, the psychiatric report and it would not automatically go to the crown, would it? Plainly, I would have no objection to you looking at it but that ought to be clarified with Mr Kirk, I suppose.

MR TWOMLOW: Yes, I think.

C **JUDGE VOSPER:** Rather than my handing it to you in the interim.

MR TWOMLOW: Yes, it should.

D **JUDGE VOSPER:** What I will do then, if I may, is simply rise to read this report, I will not take very long, and read your case summary and Mr Kirk can be brought up to court in the meantime.

(Short adjournment 11.29am – 11.49am)

THE CLERK: Case for plea and case management hearing. Are you Maurice Kirk?

E **MR KIRK:** Sorry?

THE CLERK: Are you Maurice Kirk?

MR KIRK: Could I---

F THE CLERK: Are you Maurice Kirk?

JUDGE VOSPER: Is your name Maurice Kirk?

MR KIRK: I've been brought here because there's a case ...

JUDGE VOSPER: Sit down Mr Kirk. Yes, Mr Twomlow.

G **MR TWOMLOW:** Your Honour, this case appears in the list today for plea and case management hearing, the papers in the case having been served in August. It may be listed as well, I think, for a bail application to be made. That is what is suggested by the list.

H **JUDGE VOSPER:** Yes.

A **MR KIRK:** Excuse me, I can't hear very well. Could I sit a little nearer, please?

JUDGE VOSPER: Yes, if you wish. Where do you want to sit?

MR KIRK: Just there.

B **JUDGE VOSPER:** Is there a dock officer who can bring him forward? Yes.

(Mr KIRK sits in counsel's row)

MR KIRK: Thank you, your Honour.

JUDGE VOSPER: Right. Please sit down. Yes?

C **MR TWOMLOW:** I will start again. The case was listed for plea and case management hearing today.

MR KIRK: Could I have a pen and paper, please?

D **JUDGE VOSPER:** I do not have a spare one, I am afraid, if someone can help you. Yes.

MR TWOMLOW: It is also the return date in respect of a Section 35 Mental Health Act Order that was made on the last occasion in respect of Mr Kirk, since when he has been at The Caswell Clinic and I understand there may be a bail application today. That is something I have simply divined from the court list.

E **JUDGE VOSPER:** Yes. Now, you have prepared a summary.

MR TWOMLOW: I have prepared a case summary, your Honour, which I handed in to the court earlier on and which I was able to hand to Mr Kirk before the hearing. He indicated that he thought he should have been or might have been served with it earlier on. In fact, it was only prepared yesterday because I had not come into possession of all the statements in the case until the day before yesterday. So Mr Kirk has been served with that, really, as soon as has been practicably possible.

F **JUDGE VOSPER:** Right. Yes, thank you.

MR TWOMLOW: Your Honour, I do not know how your Honour wishes to proceed, so far as this hearing is concerned.

H

A **JUDGE VOSPER:** Well, first of all I am just going to find out what the position is under Section 35.

MR TWOMLOW: Yes.

B **JUDGE VOSPER:** Which is at paragraph, page 958, I think.

MR KIRK: I do not wish to interrupt but could I seek an adjournment?

JUDGE VOSPER: Sit down for a moment, Mr Kirk, while I just read the Section that the other Judge made the Order under.

C **MR TWOMLOW:** Does your Honour have the Section?

JUDGE VOSPER: I do, yes. Mr Kirk, you wanted to ask for an adjournment?

D **MR KIRK:** Your Honour, I've just heard that there is a bail application. Is that for me or for the prison or for the hospital?

JUDGE VOSPER: Well, I think it has been listed on the assumption that you wanted to make a bail application. Is that wrong?

MR KIRK: I was told that I had to give notice of at least 24 hours.

E **JUDGE VOSPER:** You should give notice, yes. I have not seen any notice from you.

MR KIRK: I don't think I have either.

JUDGE VOSPER: No.

F **MR KIRK:** So I think I'm entitled to know whose idea it is.

JUDGE VOSPER: Well, I do not know.

MR KIRK: Could I ask somebody to inform the court, in the interests of justice?

G **JUDGE VOSPER:** I think, in fact, the real reason this case has come back today is because there has been an interim report from Dr [REDACTED] You have seen that, have you?

H **MR KIRK:** Of course not. I'm a mental patient and please, while now you've raised the subject, your Honour, I am being monitored as I speak as to my conduct for the mental home, the asylum that I currently am in, a secure mental hospital, my conduct, my demeanour, anything

A I say to the court, is going to be used against me with the threat that I may be sectioned to 36,
Section 36 of the 1984 Act, and that is the slippery slope to Broadmoor.

JUDGE VOSPER: Do you not have a copy of the report?

B **MR KIRK:** I say that, your Honour, because (a) I don't have the report.

JUDGE VOSPER: Well---

MR KIRK: And if I am---

JUDGE VOSPER: You should be given one.

C **MR KIRK:** If I am correct in what I am saying---

JUDGE VOSPER: Do we have a spare copy?

MR KIRK: If I am correct in what I am saying, I am now being handed---

D **JUDGE VOSPER:** Do you want time to read that?

MR KIRK: ... an interim report made by Dr [REDACTED] of The Caswell Clinic, dated
the 2nd September of this year. I would ask that those members of the mental hospital should
leave this court because it's placing me in some difficulties, under The Mental Health Act.
E Alternatively, I should be allowed an adjournment, in the time that they can take instructions
from whoever represents the hospital as to their position. I wish to make an application – am I
allowed to make applications? Last time I was---

F **JUDGE VOSPER:** You can ask.

MR KIRK: Well, your Honour, with all due respect, on the 6th July Judge Morris, here in this
court, refused my right to make any applications at all, so I am grateful for what you have
implied, that I will be able to make a few applications today.

G **JUDGE VOSPER:** What are they?

MR KIRK: Well, I wish to be returned to prison immediately because, for one month now, I
have been in custody in a secure hospital unit. I have made applications in writing and verbally
virtually every day of the week, to get at my law books relating to The Mental Health Act, the

H

A 1968 Firearms Act and I suppose I've got an old copy of The Bail Act. All these matters have
B been raised in the few minutes that I've been here and I haven't even been here ten minutes yet
and I feel that it's contrary to Article 6 of The European Charter of Human Rights. I'm not
referring to that nasty piece of equipment created by Mr Blair, to withhold Section 1 of The
European Charter of 1948. I am referring to my basic rights, whichever document you would
rely, that I get back to the prison in order that I can come back this afternoon with my full legal
papers relating to why I'm in custody since the 22nd June. I think that's a reasonable application
and I'd ask you to look at it favourably. Thank you for your time.

JUDGE VOSPER: Do you want to read the report from Dr Williams, if you have not already
read it?

MR KIRK: Well, without my legal documentation I feel that, if I say to you I read it, I may not
be any better off.

JUDGE VOSPER: No, all right.

MR KIRK: Excuse me. I've only just noticed it's got eight pages. Last time the report to get
me sectioned, to the horror of my family and friends, at least the document was handed to me as
I walked to the court. In fact, I was in a wheelchair. This time I'm being given it, 24 hours, I put
in writing to the prison that I'm in at the moment, The Caswell Clinic, that I required the report
24 hours before. This is dated 24 hours ago.

JUDGE VOSPER: Yes.

MR KIRK: I hope I'm putting it across to you that I am a little upset at the way I'm being
treated.

JUDGE VOSPER: Yes, I only got it a few minutes ago myself. That is why I am giving you
time to read it, if you want to.

MR KIRK: Not without my proper legal representation. Am I entitled to be legally
represented? Am I?

A **JUDGE VOSPER:** Are you legally represented?

MR KIRK: Sorry?

JUDGE VOSPER: Are you legally represented?

B **MR KIRK:** Well, my McKenzie's friend should be here.

JUDGE VOSPER: No, I am not talking about a McKenzie friend. I am talking about a solicitor or counsel.

MR KIRK: Yes.

C **JUDGE VOSPER:** We understand that you do not have legal representation. If that is wrong and you do, tell me now and I will put the case back for your solicitor or barrister to attend.

MR KIRK: Has the court had any documentation to suggest I'm legally represented?

D **JUDGE VOSPER:** No. Are you? Have you instructed a solicitor to act for you?

MR KIRK: The answer I heard was "No."

JUDGE VOSPER: Are you legally represented?

E **MR KIRK:** I'm under assessment at a mental home at the moment, so I am in some difficulties in answering your question.

JUDGE VOSPER: Have you instructed a solicitor to act for you?

F **MR KIRK:** Could I answer your question in the absence of members of the hospital staff who, if you read [REDACTED] first interim report to get a Section 35 served on me, it states that I'm under 24-hour surveillance in order to put a report, which I have here, which has caused the hospital to apply for a further couple of months to have me detained unlawfully.

JUDGE VOSPER: Yes, all right.

G **MR KIRK:** That is the seriousness of why I wish the court to be cleared of anybody acting on behalf of The Caswell Clinic and I have taken the opportunity to serve witness summonses on a number of people from that Department who have got psychiatric reports favourable, in

H

A contradiction to why they have me in that hospital and I wish to call them in due course to quash any requirement for me to return to the hospital.

RULING

B **JUDGE VOSPER:** On the 7th August this year His Honour Judge Llewellyn-Jones QC made an Order under Section 35 of The Mental Health Act in respect of Mr Kirk, this defendant and that has come back before me today with an updated report by Dr [REDACTED] The report requests that I make a further Order for a further 28 days under Section 35 because Dr [REDACTED] has been unable to come to a conclusion finally which will enable the court to proceed. I have power, under Section 35 (7) to extend the Order which Judge Llewellyn-Jones made for a further 28 days.

D Having read the report and listened to the defendant today it seems to me that there is no alternative but to extend the Order, as Dr [REDACTED] recommends and, accordingly, I extend the Section 35 Order for a further 28 days from today.

MR KIRK: Do I not have some legal right to question the content of it?

E **JUDGE VOSPER:** I gave you that opportunity, Mr Kirk, to read it. That is the Order that I am going to make.

MR KIRK: But I have been refused---

F **JUDGE VOSPER:** I will now rise. I will rise while the court is reconstituted.

(12.05pm)

G

H

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

B

Signed: Mendip-Wordwave Partnership

C

D

E

F

G

H