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IN THE CROWN COURT
AT CARDIFF

Appeal No. A20130139

The Law Courts
Cathays Park
Cardiff
CF10 3PG

3rd January 2014

Before:

HIS HONOUR JUDGE BIDDER QC

REGINA

- v -

MAURICE JOHN KIRK

MR C SMYTH appeared for the prosecution

The Defendant appeared in person

ALL PROCEEDINGS

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ALL PROCEEDINGS

(10.07am)

JUDGE BIDDER: Yes, Mr Smyth.

MR SMYTH: Your Honour, I appear for the prosecution in two of the three cases that have been listed.

JUDGE BIDDER: Just a moment. Can you hear what is going on, Mr Kirk?

THE DEFENDANT: Well enough, your Honour.

JUDGE BIDDER: Thank you. You can sit down if you wish. Right, yes.

MR SMYTH: Your Honour, I am appearing for the prosecution. I am the trial counsel in two of the cases that are listed before your Honour this morning ...

THE DEFENDANT: Sorry to interrupt. May I have my legal papers? May I have something to read and write with?

JUDGE BIDDER: Have you got a pen and a piece of paper? As far as legal papers, they have been served on you, have they not?

THE DEFENDANT: No. I have somebody in the gallery who's trying to bring them to me. He's been to the prison six times and he's been refused. I would like to have those at the beginning of these proceedings.

JUDGE BIDDER: What legal papers are those?

THE DEFENDANT: Relating to the alleged offences.

JUDGE BIDDER: Have you had the prosecution papers? Have the prosecution served the papers on Mr Kirk at the PC ...

MR SMYTH: Yes. They have been served ...

JUDGE BIDDER: When?

MR SMYTH: In relation to the original case ...

A **JUDGE BIDDER:** Which original – let us deal with it in sequence?

MR SMYTH: The first case that I am dealing with are the allegations of common assault times two, witness intimidation times two.

B **JUDGE BIDDER:** Yes. What does the witness intimidation amount to?

MR SMYTH: Sorry?

JUDGE BIDDER: What does the witness intimidation amount to?

MR SMYTH: It is a threat, sat in a car making a sign like that across the throat.

C **JUDGE BIDDER:** Yes.

MR SMYTH: That is a matter that was charged in the Magistrates’, upon which Mr Kirk elected trial.

D **JUDGE BIDDER:** Right. Yes.

MR SMYTH: And during the course of that case, or proceedings before the Recorder, requests were repeatedly made by Mr Kirk for papers and they were served upon him personally in Court.

JUDGE BIDDER: Right. Thank you. That is fine.

E **MR SMYTH:** The next case I am briefed in is the breach of the restraining order and threats to cause damage.

JUDGE BIDDER: Yes.

F **MR SMYTH:** I have not seen the papers served personally upon him. My understanding is they have been served on him, so ...

JUDGE BIDDER: Well, he certainly had them the last time he appeared in front of me because he argued based on the papers that he had.

G **MR SMYTH:** Indeed.

JUDGE BIDDER: Thank you. Right.

H

A **MR SMYTH:** What he would not yet have, and which I have for him this morning, and I do not know whether your Honour has it, but it is Notice of Additional Evidence by Steve Gunney, the officer in the case, who is present actually here in Court to assist if need be ...

B **JUDGE BIDDER:** Which case?

MR SMYTH: That is the breach of the restraining order and the threats to cause damage. There is now a typed transcript of the call that forms the basis of the threats to cause damage.

JUDGE BIDDER: Right.

C **MR SMYTH:** Together with a disk recording that call. I have that available for Mr Kirk.

JUDGE BIDDER: Is there a transcript for me?

MR SMYTH: Your Honour has not received it?

D **JUDGE BIDDER:** I have not got it.

MR SMYTH: Can I hand your Honour my copy? (Handed). The parts upon which the Crown relies are highlighted in red.

JUDGE BIDDER: Okay.

E **MR SMYTH:** Can I hand a copy to Mr Kirk?

JUDGE BIDDER: Yes. (Handed).

THE DEFENDANT: Could I have a pair of glasses, please?

F **JUDGE BIDDER:** Have you not got a pair of spectacles, Mr Kirk?

THE DEFENDANT: I have asked the prison to give me glasses for three months ...

JUDGE BIDDER: What is the problem with your eyesight, Mr Kirk?

THE DEFENDANT: I think it's a matter of old age and, um ...

G **JUDGE BIDDER:** Short sight or long sight or what?

THE DEFENDANT: I have inherited a condition from my father and I don't intend to discuss it.

H

A **JUDGE BIDDER:** Right. Well, unless you are prepared to discuss it I am not going to cooperate with you in getting spectacles for you. I want to know what the condition is, please, Mr Kirk?

B **THE DEFENDANT:** Well, it's on my medical records, which is what I am here for today.

JUDGE BIDDER: Right. Okay. Thank you.

THE DEFENDANT: And there is somebody in the public gallery who has my glasses.

JUDGE BIDDER: Right. Thank you.

C **THE DEFENDANT:** And I'm asking that I have the glasses from the member of the public who's arranged ...

JUDGE BIDDER: What is your ... Have you got short sight or long sight?

D **THE DEFENDANT:** We are here concerning the medical records ...

JUDGE BIDDER: Right, of course, Mr Kirk. Well, do sit down, please. Right. Thank you. Now, let me look at this, please. Right. More or less what she says in her statement but it is helpful to have the transcript.

E **MR SMYTH:** Yes. Yes.

JUDGE BIDDER: Yes. Now, before we leave that, please ...

MR SMYTH: Yes.

F **JUDGE BIDDER:** Where is the evidence, in relation to the breach of the restraining order, that there were postings on the site after the restraining order was made?

MR SMYTH: If your Honour looks at exhibit page ...

JUDGE BIDDER: Just get the right – which number is this? This is the 144, is it not?

G **MR SMYTH:** If your Honour looks at the bundle, exhibit page ...

JUDGE BIDDER: Exhibits?

MR SMYTH: Exhibit page 55 onwards.

H **JUDGE BIDDER:** Right.

A **MR SMYTH:** Well, I think perhaps we ought to just start with the actual order itself.

JUDGE BIDDER: Yes, certainly. That is now exhibited. It is helpful to have.

MR SMYTH: There are, in fact, two orders of relevance because the original order, which is at
B exhibit page one ...

JUDGE BIDDER: Yes.

MR SMYTH: Is dated the 1st December 2011.

JUDGE BIDDER: And is a ... Right, okay.

C **MR SMYTH:** But that order ...

JUDGE BIDDER: Can I just look at the indictment, first of all, in relation to this?

MR SMYTH: Yes, and what your Honour will notice, it is that order that is pleaded to have
D been breached.

JUDGE BIDDER: Right. Just give me a moment. Now, where is the indictment?

MR SMYTH: I can let your Honour have a copy if it has not come to you.

JUDGE BIDDER: No, it is all right. I have one. So acting in breach of a restraining order
E between the 2nd December 2011 and the 13th October 2011 and is the restraining order on the 1st
December 2011.

MR SMYTH: Yes.

JUDGE BIDDER: “Placed or became a party to information being placed.”

F **MR SMYTH:** I have looked at this, your Honour ...

JUDGE BIDDER: Section, please, is where in Archbold, 5(5), 1997? It is the Protection from
G Harassment Act and it is section 5(5): 19-350. Right. “If without reasonable excuse the
defendant does anything which he is prohibited from doing.” Right.

MR SMYTH: Your Honour, the point that occurred to me ...

JUDGE BIDDER: So what is this “became a party to information being placed”? What is that?

H **MR SMYTH:** The order prohibits him doing it personally.

A **JUDGE BIDDER:** Right.

MR SMYTH: Or being a party to anybody else doing it. One of the difficulties, of course, is that whilst it may appear on his website and whilst, as I shall hopefully demonstrate to your Honour in a moment, the strong inference is that the defendant did it himself, ultimately we cannot say necessarily that it is him. The order, therefore, was framed to cover what I would suggest is the obvious ...

B
C **JUDGE BIDDER:** How do you establish that he was a party to it, if you cannot say who put it on?

MR SMYTH: Well, the first thing is I say that looking at the entries, which I will take your Honour to in a moment ...

D **JUDGE BIDDER:** Well, we better look at the entries then, just to see what we are talking about.

MR SMYTH: I was referring your Honour to ...

JUDGE BIDDER: I am at page 55 in the ...

E **MR SMYTH:** Yes. Well, that is the start.

JUDGE BIDDER: Yes.

MR SMYTH: But if you go to page 56 you will see that there is a ...

F **JUDGE BIDDER:** A reference to Doctor Williams.

MR SMYTH: Yes.

JUDGE BIDDER: Yes.

MR SMYTH: The correct term for that escapes me for a moment. It is a tab, I think you tab on that and that will take you to ...

G **JUDGE BIDDER:** It is a hyperlink.

MR SMYTH: Pardon?

H **JUDGE BIDDER:** Hyperlink.

A **MR SMYTH:** Yes, yes. Thank you. But if you continue ...

JUDGE BIDDER: Yes.

MR SMYTH: And we will see that at exhibit page 64, for example, we have a section headed
B ‘Doctor Tegwyn Williams’s wrongdoing’.

JUDGE BIDDER: Yes. Yes. Right oh. When was it placed on the site?

MR SMYTH: Well, if you carry on you will see at the end of that there is a posting: Maurice
Kirk, the 12th March 2013, and that is on exhibit page 67.

C **JUDGE BIDDER:** 67. The 12th March 2013 with his name above it.

MR SMYTH: Yes.

JUDGE BIDDER: And does that follow the passage about Mr Williams?

D **MR SMYTH:** Well, it appears to but also the same precedes it all. If you go back to ...

JUDGE BIDDER: If you look at page 65 there is a paragraph about Doctor Williams. The
same paragraph in going up to 19 ends with Maurice John Kirk, the 12th March 2013 ...

MR SMYTH: Yes.

E **JUDGE BIDDER:** And he accepts that he has a website when he is interviewed?

MR SMYTH: Yes. Yes.

JUDGE BIDDER: All right.

F **MR SMYTH:** It goes further than that because in interview what he says is ...

JUDGE BIDDER: So you can prove it from this, can you? Well, you can prove it from this
document?

MR SMYTH: I say, firstly, yes.

G **JUDGE BIDDER:** Right.

MR SMYTH: The ...

JUDGE BIDDER: Can we just stop there? You can prove the count from this document and
H the interview?

A **MR SMYTH:** That is my submission.

JUDGE BIDDER: All I want to know: why do you need Doctor Williams?

MR SMYTH: I do not.

B **JUDGE BIDDER:** Right. Okay. I have got a statement from him; that is why.

MR SMYTH: It is not ...

JUDGE BIDDER: He is not relied on.

MR SMYTH: There is no statement from him in the bundle now served and relied upon.

C **JUDGE BIDDER:** Excellent. Thank you. That is really all I wanted to know.

MR SMYTH: Good.

JUDGE BIDDER: So you can establish on the face of the document – I mean Mr Kirk can explain it; of course he can ...

D **MR SMYTH:** Yes.

JUDGE BIDDER: But you can establish that there is a date showing when material was put on and there is *prima facie* evidence it was done by Mr Kirk?

E **MR SMYTH:** Yes.

JUDGE BIDDER: Fine. That is fine. That is what I wanted to know and I now know it. Right. Thank you very much. Well that is that case. So let us just quickly, before we move on to anything else ...

F **MR SMYTH:** Yes.

JUDGE BIDDER: The first trial, that is the assaults and witness intimidation ...

MR SMYTH: Yes.

G **JUDGE BIDDER:** Is due for trial on the 10th March.

MR SMYTH: I did not know that.

H

A **JUDGE BIDDER:** Yes. There is a letter that has been sent to Mr Kirk and to the prosecution, I think. Let me just get the letter, first of all. Yes, directions given by the Recorder of Cardiff. May I read it out so that you know about it?

B **MR SMYTH:** Yes, please.

JUDGE BIDDER: “Her Ladyship, the Recorder of Cardiff, has asked me to contact you,” this is a letter to Mr Kirk, “in relation to your three outstanding cases at Cardiff Crown Court. The case was heard in your absence on Wednesday, the 27th November 2013, when you refused to attend Court in person or appear on the video link. The Recorder of Cardiff has given the following directions. The Court has received the independent psychiatric report of Doctor Dave Barker, the 25th November 2013. Notes it is his expert opinion Mr Kirk is fit to plead and stand trial. A copy of that report must be served on Mr Kirk at Cardiff forthwith. In the light of that opinion the Court will list the following provisional trial dates. The first trial date,” that is 801, suffix 801, “allegations of assault and witness intimidation, the 10th March 2014 for three days.”

E All right? So that is when that is listed. Are there any witness problems, the two gentlemen who are the direct witnesses of the assault ...

MR SMYTH: Yes.

F **JUDGE BIDDER:** Any witness problems in relation to those dates, as far as you are aware?

MR SMYTH: If I say I am not aware of any that is a rather uninformed comment and it ...

JUDGE BIDDER: Well, I am going to order this: within seven days ...

MR SMYTH: Thank you.

G **JUDGE BIDDER:** The prosecution become aware of any witness problems in relation to that date. They must apply to the Court to list the matter for mention for a further trial date to be listed.

H **MR SMYTH:** Yes.

A **JUDGE BIDDER:** Okay. Then the second trial is the threat to cause damage in breach of a restraining order. That is listed on the 24th March 2014 for three days.

MR SMYTH: Yes.

B **JUDGE BIDDER:** Again, I am going to make a similar order in relation to that, seven days. I do not think there are really any problems. It is the receptionist ...

MR SMYTH: The receptionist and officer in the case.

JUDGE BIDDER: The main witness and the officer in the case.

C **MR SMYTH:** Yes.

JUDGE BIDDER: That is right. Okay. Now, the appeal from conviction, in this letter I have to say I do not see a date having been given for the appeal, but it is listed after those two trials. So I think that we will have a look at that ...

D **MR SMYTH:** Yes.

JUDGE BIDDER: But as far as the prosecution are concerned and as far as witness problems are concerned, you are not aware of any at the present time but within seven days you will notify us.

E **MR SMYTH:** I will confirm.

JUDGE BIDDER: And I think there may be applications the prosecution have to make in relation to both those trials but we will come to that. The appeal against conviction ...

F **MR SMYTH:** Yes.

JUDGE BIDDER: Now, first of all, the Court has not received up to date witness availability for the appeal. What are the witnesses upon whom the prosecution rely in the appeal, please?

G **MR SMYTH:** I have to offer this apology: I am not the counsel instructed in that case.

JUDGE BIDDER: Oh, I am sorry. Right.

MR SMYTH: I see from a prohibition to prevent cross-examination by the defendant in person, who the counsel instructed in that case is, so I was rather assuming ...

H

A **JUDGE BIDDER:** That case is listed.

MR SMYTH: I know, and I was rather assuming that the separate counsel dealing with that would be appearing. I have never had the brief in that case, so ...

B **JUDGE BIDDER:** Oh gosh. So you are not instructed in that?

MR SMYTH: I am not.

JUDGE BIDDER: Well, do we know why counsel who was instructed is not here?

MR SMYTH: No, but what I would like to do, if I may, is hold it and offer such assistance as I

C can.

JUDGE BIDDER: Well, are you able to make the application?

MR SMYTH: Yes, because it mirrors an application I would also wish to make in respect of the

D ...

JUDGE BIDDER: Are you able to tell me what happened in the court below?

MR SMYTH: It is set out in the ...

JUDGE BIDDER: Well, it is not set out in sufficient detail as far as I am concerned.

E **MR SMYTH:** Well, in that case I am not.

JUDGE BIDDER: You see the trouble is was the learned counsel who drafted the applications present in the court below?

MR SMYTH: Yes.

F **JUDGE BIDDER:** Ah. She should have turned up, I am afraid.

MR SMYTH: Yes.

JUDGE BIDDER: “On the 3rd January the Court will give further directions,” the letter

G continues.

MR SMYTH: Yes.

JUDGE BIDDER: Yes. Well, I am going to have to make do as best I can. I want to give

H directions in that case.

A **MR SMYTH:** Yes.

JUDGE BIDDER: First of all, there is an application by Mr Kirk to list the appeal outside Wales, South Wales.

B **MR SMYTH:** Is that application just in relation to the appeal or is he ...

JUDGE BIDDER: I think it is just in relation to the appeal.

MR SMYTH: Not the other cases.

JUDGE BIDDER: It is an application to list the appeal outside South Wales, so ...

C **MR SMYTH:** Do we have a date? We do not have a date for that?

JUDGE BIDDER: We do not have a date as yet, because we have not had the witness availability.

D **MR SMYTH:** No. I wonder ...

JUDGE BIDDER: Well, I mean the fact is I am not sure that I can really deal with the matter because I need to know ...

MR SMYTH: My submission entirely, and I can only offer apologies for that. But my attempt

E to try and help, I think, is going to make matters worse rather than assist.

JUDGE BIDDER: Right. Well, then I am going to have to re-list this on another occasion. Well, I suppose I could list this on Tuesday of next week, on the 7th.

F **MR SMYTH:** And direct that witness availability be provided by then.

JUDGE BIDDER: Yes. I think I will do that. I will list this in front of myself on the 7th – what is Tuesday?

MR SMYTH: It is 7th.

G **JUDGE BIDDER:** Tuesday the 7th January. It will be listed at 9.30. It can listed by means of video link and I want counsel who appeared below ...

MR SMYTH: Yes.

H

A **JUDGE BIDDER:** And whose application it is for an order under section 36 to be present, I am afraid.

MR SMYTH: Yes.

B **JUDGE BIDDER:** Or somebody who is properly instructed as to what happened in the court below, Mr Smyth.

MR SMYTH: Yes.

C **JUDGE BIDDER:** Because the issue is would cross-examination by Mr Kirk personally reduce the quality of the evidence? Now, I want to know why it is said that the quality of the evidence, the evidence, is going to be diminished as a result of Mr Kirk cross-examining. Not whether it will take longer.

D **MR SMYTH:** Yes.

JUDGE BIDDER: Or whether allegations, which should not be made, are going to be made, in which case it is a matter for the trial judge to stop those allegations being made.

MR SMYTH: Yes.

E **JUDGE BIDDER:** It is a question of whether the quality of the witnesses' evidence is likely to be diminished.

MR SMYTH: Yes.

F **JUDGE BIDDER:** And that is what I think we must turn our minds to.

MR SMYTH: Yes.

G **JUDGE BIDDER:** Apart from the interests of justice test, which is also to be considered. But I will fix a date on Tuesday. So I need the witness availability and I will then hear Mr Kirk's application to list the appeal outside South Wales. I will hear the prosecution's application that that be heard by a judge who does not sit regularly in Cardiff.

MR SMYTH: Yes.

H

A **JUDGE BIDDER:** And by Magistrates who do not sit regularly in Cardiff. In other words, people who do not know or have any close connection with the alleged victim of the assault. So I think that is as far as I can go with that.

B **MR SMYTH:** Yes.

JUDGE BIDDER: All right? So that is Tuesday of next week.

MR SMYTH: Yes. Thank you.

C **JUDGE BIDDER:** Right. I will reserve it to myself. Now, what else can we deal with in relation to these two trials?

MR SMYTH: The issue cropped up before your Honour at the last hearing as to whether the prosecution should be making an application under section 36 to prohibit cross-examination in relation to the witnesses in the common assault and witness intimidation.

D **JUDGE BIDDER:** Yes.

MR SMYTH: Not, obviously, the second case because they are police officers and we would not seek to suggest that.

E **JUDGE BIDDER:** Right. So is there an application before me?

F **MR SMYTH:** Well, I drafted an application, which I forwarded to the caseworker and my attempts to subsequently contact were abortive. I understand, and the reason why this may not have reached Court, is that her daughter was admitted some time before Christmas to hospital with a brain haemorrhage, which is only a partial excuse because, obviously, somebody else perhaps should have checked her e-mails, but that ...

JUDGE BIDDER: No, I totally understand.

G **MR SMYTH:** So I have drafted an application. Mr Kirk has not seen it. Let me put it before your Honour. Whether we deal with it ...

JUDGE BIDDER: Yes, but I do not want to see anything that Mr Kirk has not also been given.

H **MR SMYTH:** No.

A **JUDGE BIDDER:** Have you got a copy?

MR SMYTH: Yes, indeed.

JUDGE BIDDER: All right. You can give a copy to him.

B **MR SMYTH:** But I am just wondering, it may be expecting a lot for him to digest this on the hoof.

JUDGE BIDDER: I think it is, in which case we better put everything on Tuesday at 9.30, had we not? Well, if you have got a further application, you see?

C **MR SMYTH:** Yes.

JUDGE BIDDER: I am quite happy for you to hand it to him now. But, I agree, it is not really fair to ask him to deal with a section 36 application in relation ... Can I just have a look at it quickly, please?

D **MR SMYTH:** Yes.

JUDGE BIDDER: Have you got any supportive evidence?

MR SMYTH: Well, I do but you will see how I put it.

E **JUDGE BIDDER:** All right.

MR SMYTH: Your Honour has already made some comment. Your Honour may quickly say this is not appropriate.

F **JUDGE BIDDER:** I will just look at it.

MR SMYTH: Yes.

JUDGE BIDDER: Where have the witnesses expressed the desire not to be cross-examined by the defendant?

G **MR SMYTH:** That was communicated to me by e-mail and that then prompted that application. There is no ...

JUDGE BIDDER: Why ...

H **MR SMYTH:** Pardon?

A **JUDGE BIDDER:** Why have they said that? I mean have they said 'We're frightened that he will do something to us in Court' or what? I mean they are not vulnerable witnesses, are they?

MR SMYTH: No.

B **JUDGE BIDDER:** They are two grown men. Is that not right?

MR SMYTH: Indeed.

JUDGE BIDDER: Irrelevant cross-examination, it is the obligation of the trial judge to stop, is it not?

C **MR SMYTH:** Indeed.

JUDGE BIDDER: Section 35 and 34 deal respectively with child witnesses and with witnesses in sexual cases. That is from my recollection. I do not think they deal more generally with vulnerable witnesses, do they? The point is these are a trio of sections. If sections 34 and 35 does not apply you have got to look at 36. Okay?

MR SMYTH: Your Honour is ...

E **JUDGE BIDDER:** The point I make is that one is looking at a series of sections which are predominantly dealing with vulnerable witnesses. Now, these are not vulnerable witnesses, are they?

MR SMYTH: I do not put them forward as vulnerable witnesses, no.

F **JUDGE BIDDER:** No. Irrelevant cross-examination should be stopped, should it not?

MR SMYTH: Indeed.

JUDGE BIDDER: And there is a power to stop it at common law.

MR SMYTH: Yes.

G **JUDGE BIDDER:** You do not need a section for that. Now, on the basis of this, why is their evidence likely to be diminished in its quality as a result of questioning by Mr Kirk himself?

H **MR SMYTH:** My submission on that would be that we have seen ample evidence ... This is the first case I have been involved in ...

A **JUDGE BIDDER:** Mm.

MR SMYTH: And I have already seen ample to suggest that very quickly we move off a point.

B **JUDGE BIDDER:** Yes. He asks a lot of irrelevant questions. He has to be stopped. If he does not listen to the Court's direction he will be taken down to the cells. It is as simple as that, is it not?

MR SMYTH: And some of the attack that was being put in interview – I appreciate your Honour says well that needs to be restrained. The concern was has ...

C **JUDGE BIDDER:** Well, unless it is relevant.

MR SMYTH: Yes. Well, that ...

D **JUDGE BIDDER:** His case is that he is forfeiting the lease, is it not? I think he is saying that he is re-entering, is he not? That is what is ...

MR SMYTH: Well, he is claiming he has a right to possession. His daughter does, certainly.

JUDGE BIDDER: Yes, a right to possession. So ...

E **MR SMYTH:** And that in the process of that he is suggesting, albeit he is referring to an incident that happens after, these are tenants who became violent.

JUDGE BIDDER: And on what basis is he saying a right to possession? Breach of covenant? It may not be much of a civil case but it is ...

F **MR SMYTH:** I believe non-payment of rent.

JUDGE BIDDER: Yes, non-payment of rent.

MR SMYTH: As I understand it, and then the involvement of what I assume to be a certified ...

G **JUDGE BIDDER:** In any event, in this I have got no statements from either of the witnesses who say 'we don't think we'll be able to give best evidence because we are concerned about the cross-examination'. If you are going to make an application of this sort I am afraid you are going to need evidence of that.

H **MR SMYTH:** Your Honour, I will, if I may ...

A **JUDGE BIDDER:** The question is can you get it by Tuesday? You do not know?

MR SMYTH: No.

JUDGE BIDDER: No.

B **MR SMYTH:** My instincts at the moment are to leave this application.

JUDGE BIDDER: Right oh. That is fine. Okay. I will hand it back to you. Thank you.

MR SMYTH: But subject to further evidence ...

JUDGE BIDDER: Now, are there any other arrangements that we can make for the two
C indictment trials that we have? The witnesses are available. There are no applications ... Are
there bad character applications in either of the cases?

MR SMYTH: At the moment I am not entirely clear of the issues. There is potential for bad
D character in both cases. In relation to the common assaults/witness intimidation I am
anticipating quite a strong attack on character and I am anticipating an application ...

JUDGE BIDDER: You may make an application under (g) but one will have to wait till trial.

MR SMYTH: Exactly. Exactly.

E **JUDGE BIDDER:** Right.

MR SMYTH: I took the view that whilst he has recent offences of breach of the restraining
order and harassment ...

F **JUDGE BIDDER:** I think what I am going to do is just go through the green form. Have you
got the little green forms, the forms for PCMH?

THE CLERK OF THE COURT: I think they're on the Judge's papers at the back, Judge.

JUDGE BIDDER: You are quite right, and I am going to go through them. Well, let us start
G with the breach of the restraining order and just scurry through it to see that we have got things
ready for trial. So we will start with 20130801, is the assault and witness intimidation. Well, I
will take that first then. Custody time limit expiry, please?

H **MR SMYTH:** Yes. Custody time limit expires for both cases on the 15th April.

A **JUDGE BIDDER:** And the date of the trial on this is the 10th March. And the time estimate is three days.

MR SMYTH: Yes.

B **JUDGE BIDDER:** Have you purported to complete primary disclosure?

MR SMYTH: Yes.

JUDGE BIDDER: Thank you. Should the trial judge be allocated? I do not think so. In relation to that case, which is the assault and witness intimidation case, is there any additional evidence to be served?

MR SMYTH: No.

JUDGE BIDDER: No. There is no case summary necessary.

D **MR SMYTH:** I would hope not.

JUDGE BIDDER: Only bad character application if attacks made on witnesses. There is no hearsay in that case.

MR SMYTH: No.

E **JUDGE BIDDER:** There is no CCTV, is there?

MR SMYTH: There is ...

JUDGE BIDDER: But the outside of the premises?

F **MR SMYTH:** Yes.

JUDGE BIDDER: Is that going to help anybody?

MR SMYTH: No. I say not; Mr Kirk may think otherwise.

JUDGE BIDDER: Well, are you relying on it?

G **MR SMYTH:** No.

JUDGE BIDDER: Right. Not relied on by prosecution. Well, you are not at present making the section 36 application.

H

A **MR SMYTH:** I have taken your Honour's point, that if it is to be properly pursued I need better evidence.

JUDGE BIDDER: There are no documents in that case, are there?

B **MR SMYTH:** Not that ... No.

JUDGE BIDDER: Well, I am just looking at the jury bundle ...

MR SMYTH: No.

JUDGE BIDDER: But there is nothing necessary.

C **MR SMYTH:** No.

JUDGE BIDDER: Okay. Now, there is, I think, in that case – is there a Defence Statement?

MR SMYTH: There is certainly a document that ...

D **JUDGE BIDDER:** Yes, I have it. Oh no, I do not. Oh yes, yes we have. Yes, I have got it. I have got a Defence Statement. Now, in the Defence Statement there is an application to dismiss the witness intimidation count. I just check to see whether ... And it is alleged that they have been wrongly joined. Right. Okay. Well, we better deal with those, had we not, at this stage?

E Right. Right, Mr Kirk, I have your Defence Statement in relation to the assault, the Kingsley and Davenport assault and witness intimidation cases, and in your Defence Statement you make an application that the matters have been wrongly joined and also that there is no evidence to support the intimidation of witness charges, contrary to section ... Well, there is no evidence to support the witness intimidation charges. Let us deal with them successively, if we may? You say that there is no evidence or not sufficient evidence for the jury to consider the intimidation of witness charges. Do you want to say any more about that?

G **THE DEFENDANT:** Your Honour, you raised the matter of my eyesight ...

JUDGE BIDDER: Yes.

H

A **THE DEFENDANT:** When I first saw you, it was on the 2nd December 2009, there were medical records before you dated November '09 indicating that I had a possible brain tumour but that I had been diagnosed with significant brain damage ...

B **JUDGE BIDDER:** Yes.

THE DEFENDANT: Sufficient for Mr Twomlow, who I'd asked to be here for today because I now understand he's a judge, and I'm disappointed because he knows more about this case than you do yourself, with respect, your Honour. And on that occasion they were applying that I be transferred to Ashworth High Security Prison for life because I was registered MAPPA level 3 on records that were used by a doctor taking videos who never even examined me. Now, I have been jailed 16 times since then ...

D **JUDGE BIDDER:** Right. Do you have any application ...

THE DEFENDANT: 16 times ...

JUDGE BIDDER: Right. I am going to ask you once more, Mr Kirk, have you got anything to say in relation to your application to dismiss the witness intimidation cases?

E **THE DEFENDANT:** Yes ...

JUDGE BIDDER: If you say something relevant to that I will hear it, otherwise I am not going to listen.

F **THE DEFENDANT:** So the fact that I don't have, the prison have punished me and will not let me have the legal papers here ...

JUDGE BIDDER: What is your evidence, Mr Smyth, in relation to witness intimidation?

MR SMYTH: The witnesses who are sat in the car outside – sorry, the witnesses ...

G **JUDGE BIDDER:** It is page nine, is it not?

MR SMYTH: Yes.

JUDGE BIDDER: Making hand gestures across the throat.

H **MR SMYTH:** Yes, as he sat in the car.

A **JUDGE BIDDER:** Thank you. Very well. There is clearly evidence of witness intimidation here and I dismiss the application to dismiss for lack of evidence ...

THE DEFENDANT: Yeah, could I explain, your Honour ...

B **JUDGE BIDDER:** The second matter, Mr Kirk, I am not going to listen to irrelevant matters from you, the second matter is whether the witness intimidation charges are properly joined with a common assault. What do you want to say about that?

C **THE DEFENDANT:** I have heard evidence given to you from someone who is inadequately briefed, for which I have sympathy, and that is that it was to do with an argument over rent. I happen to be a tenant of the property and I, that is exactly why these issues are completely separate. I wasn't the owner of the property and when the bailiff went there to evict them through the courts of England, sorry, in Bristol, and they've now been evicted, he was beaten up and the 12 police officers came and said, 'Isn't it unfortunate that the owner of the property has the same surname as Maurice Kirk'. That is why these two issues that are before you, your Honour, completely different and should have gone before the Magistrates.

E And on the matter of whether witnesses will be available, there is dispute over the tape recordings and videos of the alleged assaults. The prosecution have the video because it was alleged to have taken place inside the motorbike shop where the owner, one of the complainants, sorry one of the victims, several stone bigger than me with a criminal record of GBH and drug dealing, has boasted about the microphones and video machines within the motorbike shop where the alleged offence took place.

F I have asked for secondary disclosure under section 8 of CPIA Act and I have been refused and if I hadn't spoken you would have been leaving the court today believing that I have been given proper disclosure. I have put in a very lengthy argument in writing in advance, knowing the little time I would be given to speak, on an abuse of process, of which I have

H

A already covered the number of issues to which you are now wishing me to refer. Now, I think
I've said enough on that, your Honour ...

JUDGE BIDDER: Thank you.

B **THE DEFENDANT:** Unless I have raised a new issue.

JUDGE BIDDER: The issue of joinder, please ...

MR SMYTH: Yes.

C **JUDGE BIDDER:** Which is what? What is in the Defence Statement? This is a case which is
nye on indistinguishable from *R v Barrell and Wilson*, is it not? Paragraph 1-238: that being an
attempt to pervert the course of justice, actual bodily harm, an attempt then to bribe a witness.
Here is an attempt to threaten a witness ...

D **MR SMYTH:** Yes.

JUDGE BIDDER: There is a common nexus between the two charges, is there not?

MR SMYTH: Founded on the same facts.

E **JUDGE BIDDER:** Thank you. So the application that the charges have been mis-joined is
rejected. Thank you very much. Now, secondary disclosure, we have got a Defence Statement.
You can give secondary disclosure within 14 days, please, that being the ...

THE DEFENDANT: They have refused.

F **JUDGE BIDDER:** Well, they are going to have to give that disclosure, which they are obliged
to make under the Act. The 17th January.

THE DEFENDANT: It is the video and the tape recordings of the alleged offences, which is in
the control of the police. The owner ...

G **JUDGE BIDDER:** Well, let us just deal with that. There is CCTV ...

MR SMYTH: Well, my understanding is that such that exists has been provided.

THE DEFENDANT: That was from a neighbour ...

H **JUDGE BIDDER:** Well, how is he going to watch it, he is in prison?

A **MR SMYTH:** Pardon?

JUDGE BIDDER: How is he going to watch it?

MR SMYTH: He was not in prison all the time after receipt of it.

B **JUDGE BIDDER:** Well, you have served that device, the disk anyway. You have served the disk?

MR SMYTH: Yes, and ...

JUDGE BIDDER: Right oh.

C **MR SMITH:** And subsequently he is bailed by the Recorder.

JUDGE BIDDER: Thank you.

THE DEFENDANT: I have not seen it and the prison refused to allow me to see it ...

D **JUDGE BIDDER:** You will have to take that up with the prison, Mr Kirk.

THE DEFENDANT: I have been doing it for four years. This was when the machine gun case was on. They refused to let me see the videos and CCTV of that case.

JUDGE BIDDER: No bad character application by the defence, although it may be he makes it

E at trial.

MR SMYTH: Can I just clarify? Is Mr Kirk saying he has not received it?

JUDGE BIDDER: Well, I am not dealing with that point now. All right. There is no hearsay

F application ...

THE DEFENDANT: I have no knowledge of what I've been given ...

JUDGE BIDDER: The defendant's interviews ...

THE DEFENDANT: Until I can play it I don't know what I've got.

G **JUDGE BIDDER:** Okay. Thank you very much. And you will have to get all your witnesses to court, all right?

MR SMYTH: Certainly.

H

A **JUDGE BIDDER:** Thank you very much. That has dealt with that one. Right. Let us deal now with the ...

THE DEFENDANT: May I be legally represented ...

B **JUDGE BIDDER:** The second trial, which is ...

THE DEFENDANT: May I be legally represented?

JUDGE BIDDER: You have had a long opportunity in many hearings before the Court to be legally represented. You can make an application if you want in writing to be legally represented ...

C **THE DEFENDANT:** I have done that ...

JUDGE BIDDER: When you make application ...

D **THE DEFENDANT:** I have done that. The Recorder of Cardiff was experienced, that the lawyers dealing with it had difficulty communicating and I have raised the matter again. It's unfortunate that I'm not before her because she has intricate knowledge of this and am I entitled to the medical report to which she ordered ...

E **JUDGE BIDDER:** Yes, you are.

THE DEFENDANT: Well, could I please have a certified copy of it?

JUDGE BIDDER: Have you got a copy of Mr Barker's report, please? It is on the file. In fact, you can have it. I have got a copy in my papers. Thank you. Hand it to him. (Handed).

F **THE DEFENDANT:** Can I have that stamped as a certified true copy, please?

JUDGE BIDDER: It is a copy from the Court, Mr Kirk. Now, this is the threat to damage and breach of restraining order. Right. The same custody time limit: 15.4.

G **MR SMYTH:** Your Honour, yes.

THE DEFENDANT: Your Honour, that document you have just given me refers to the medical evidence that was before you on the 2nd December 2009, and I still will, no one will give me the relevant medical reports.

H

A **JUDGE BIDDER:** You have had the report I referred to, Mr Kirk. It was Doctor Barker's report.

THE DEFENDANT: I want the report that was from Doctor Tegwyn Williams that was before you on the 2nd December 2009 ...

B **JUDGE BIDDER:** It is not a report in this case, Mr Kirk ...

THE DEFENDANT: It is exactly the relevance of the times ...

JUDGE BIDDER: Primary disclosure completed, Mr Smyth?

C **THE DEFENDANT:** ... that I have been arrested and jailed.

MR SMYTH: I beg your pardon?

JUDGE BIDDER: Primary disclosure completed in this case?

D **MR SMYTH:** Yes.

JUDGE BIDDER: Thank you. Any additional evidence in this case? This is the threat to damage, the one you have just served on me?

MR SMYTH: Yes.

E **JUDGE BIDDER:** Served at Court.

MR SMYTH: And I would ask: can we make a note for the record that Mr Kirk was handed that ...

F **JUDGE BIDDER:** Handed it in Court.

MR SMYTH: Together with the disk.

THE DEFENDANT: Where? This disk?

MR SMYTH: In the envelope.

G **JUDGE BIDDER:** Thank you. I have made a note.

THE DEFENDANT: Where did this come ...

JUDGE BIDDER: That count, the same as before, at trial if necessary?

H

A **MR SMYTH:** No. This is a case where there are recent convictions for breaching a restraining order.

JUDGE BIDDER: Yes.

B **MR SMYTH:** Depending upon the issues it may be appropriate to make an application in advance of trial.

JUDGE BIDDER: Right. Make it within 14 days then, please, in writing.

MR SMYTH: Although it would assist to know exactly ...

C **THE DEFENDANT:** Can I just throw this to a witness, because I'm not entitled to see this?

JUDGE BIDDER: You throw anything in Court, Mr Kirk ...

THE DEFENDANT: Well, can I drop it?

D **JUDGE BIDDER:** Right. You can drop it.

THE DEFENDANT: Can it go to somebody in the public gallery? That is useless to me in prison. They will not let me see it or hear it. I apologise for the manner in which I interrupt but ...

E **JUDGE BIDDER:** 17.1.14 serve the bad character application, please. There is no CCTV in this case, however. Special measures, again ...

THE DEFENDANT: There is.

F **JUDGE BIDDER:** You are not making an application in this case because it is not appropriate.

MR SMYTH: No, no.

THE DEFENDANT: Your Honour, there is CCTV. I went to the police station a number of times on this issue ...

G **JUDGE BIDDER:** No, not in this case, Mr Kirk.

THE DEFENDANT: And the tape recordings of the number of times I phoned the police, before the one that is lying on the floor of this Court, still is being withheld from me.

H **MR SMYTH:** In fairness to Mr Kirk, can I make this observation?

A **JUDGE BIDDER:** Mm hmm.

MR SMYTH: He has provided an extensive list of disclosure requests. In there I identified one of potential relevance.

B **JUDGE BIDDER:** Right.

MR SMYTH: And the disk he has is of the call that was made to the call handler. He has asked for a recording of the call that was made to the preceding call handler. I do not know what the situation on that is but that seems to me, if that is being requested, a perfectly fair request and we will action that. The officer in the case has got it.

C **JUDGE BIDDER:** Right. I will give you until the 17th January to make your disclosure.

MR SMYTH: Thank you.

D **JUDGE BIDDER:** And I have got the ...

THE DEFENDANT: But can I not have the CCTV ...

JUDGE BIDDER: I have got the Defence Statement.

E **THE DEFENDANT:** ... of the number of times that I've been to the police station leading up to my arrest, which relates to this charge? I made numerous visits. I may well be tape recorded and then videoed and, at Barry Police Station, and I think one was also in the Central Police Station, when I was trying to get my passport back from the prison, who wouldn't let me leave the country.

F **JUDGE BIDDER:** Right. There is a Defence Statement, which has, Mr Kirk, an application to dismiss, I assume under schedule 2 of the Act, the charge of making a threat on the basis that there is insufficient evidence of the threat. Do you want to expand upon that?

G **THE DEFENDANT:** Yes. I need the legal representation that was representing me on the 2nd December when you heard the evidence from Doctor Tegwyn Williams that I had a brain tumour ...

H

A **JUDGE BIDDER:** Mr Kirk, I am quite satisfied you had an opportunity to make application for ...

THE DEFENDANT: The lawyer has been denied entry, the lawyer has been denied entry to the prison ...

B **JUDGE BIDDER:** ... representation ...

THE DEFENDANT: It is a Mr David Leathley.

JUDGE BIDDER: ... and that you have deliberately failed to so. All right? Thank you very much. Now, do you have anything to say about your application that there is insufficient evidence on the charge of threat to damage?

THE DEFENDANT: Yes. The lawyer concerned has the information that you require. It's under section, subsection 3 of the 1997 Harassment Act, brackets (a) and perhaps (c), and that is that someone is immune to this suggestion of harassing a doctor ...

JUDGE BIDDER: No, no. We are not talking about that. We are talking about the threat to damage property that was made to a receptionist. You say that there is insufficient evidence. I am dealing with that point.

THE DEFENDANT: You're not privy to the full information that will finally go before a jury, your Honour, with respect. And the law clearly states that if he was breaking the law you cannot be prosecuted and six previous judges have refused to advise me as a member of the public and I'm asking you again because if I am misguided in my own brain I must consider my position. But at the moment the law states, and I have now had a brain scan done in Cardiff Prison a few weeks ago, confirming that Doctor Tegwyn Williams told false information to the judge on the 2nd December '09, who just happened to have been you, and the medical records that were handed to you I am being denied, despite the Recorder of Cardiff at the time, Mr Cooke QC, in June '10, promising me ...

H

A **JUDGE BIDDER:** Right. Thank you. I have heard nothing relevant. I am going to make my
ruling. The transcript of the tape establishes sufficient evidence that there was a threat to
damage Doctor Tegwyn Williams's property. I dismiss the application. Thank you. Now,
B anything more on this? The Defence Statement has been served. There is nothing else there.
The interviews will be played ...

MR SMYTH: Which is the document that is the Defence Statement?

JUDGE BIDDER: I have got a Defence Statement, breaching a restraining order and that ...

C **MR SMYTH:** Ah. Right, yes. Yes, I have seen that.

JUDGE BIDDER: It deals with the ...

MR SMYTH: I have seen that.

D **JUDGE BIDDER:** Yes. Okay. Right. Thank you. Then those are as ready for trial as they
will ever be and as far as the appeal against conviction, I am afraid I am going to have to deal
with that on Tuesday morning.

MR SMYTH: Yes.

E **JUDGE BIDDER:** Thank you. That is all. Thank you.

THE DEFENDANT: Am I entitled to make a bail application?

JUDGE BIDDER: Yes, you are. I will hear it.

F **THE DEFENDANT:** Well, without the information that you appear to be delaying this Court, I
have now had a brain scan that has changed circumstances considerably in this matter in that it
gives evidence at last that the medical records that I'm here for from you, because you had them
before you on the 2nd December, was in writing, deferred from the November '09 hearing before
G her Honour Judge Eleri Rees, when, despite the medical reports at Caswell Clinic of August '09
stating there was no brain damage and no brain tumour, the medical records that were given to
you in my absence, because I was in the cells beneath, and the lawyer that was appointed by the

H

A Court has failed to give me a copy. Now, I'm entitled to the medical records that were before the Court, before you, your Honour, and until I have them I can't properly ...

JUDGE BIDDER: Do you want to say anything an address in Northampton, which you say you would be able to stay at, a bail address?

B **THE DEFENDANT:** Yes.

JUDGE BIDDER: Have the prosecution considered that bail address, please? Anybody considered it, whether it is appropriate?

C **THE DEFENDANT:** If it assists, I'll change the address.

JUDGE BIDDER: No, no. What is the address, I want to know?

THE DEFENDANT: Well, I don't have any paperwork. The prison will not let me bring the paperwork to the Court.

D **JUDGE BIDDER:** I think I can find it somewhere.

THE DEFENDANT: I would ask that I give an alternative address in the circumstances.

JUDGE BIDDER: Somewhere I have got the address, if I can find it amongst all the irrelevant material. It might be in the letter that the Recorder sent. I am sure it is here: bail application.

E **THE DEFENDANT:** I don't wish to interrupt but there's some serious changes on my forensic history since last time, which is very important.

F **JUDGE BIDDER:** If you can just tell me what the address is that you say that you can live at for the purposes of a bail application, I would consider the bail application. Can you give me the address, Mr Kirk?

THE DEFENDANT: I will have to give to a, the only address I can remember, which would have to be 175 Cowbridge Road West, Ely, CO5, 5 something, something.

JUDGE BIDDER: Oh, I know what it is. There was an e-mail from a lady ... I have got it, I have got it. It is all right. I have got it ...

H **THE DEFENDANT:** It is my flat.

A **JUDGE BIDDER:** Yes, I know. An address was sent to the Court by a Ms McNeil and it is an address offered by a Christopher Alexander at 28 Sheath Street, ‘sheath’ as in sword sheath, S-H-E-A-T-H Street, Daventry, Northamptonshire, NN11 4AB.

B **MR SMYTH:** Your Honour, that address has not been checked.

JUDGE BIDDER: Right.

MR SMYTH: But the officer in the case, if it is relevant, could carry out that check this morning and it would take a couple of hours he reckons, but ...

C **JUDGE BIDDER:** Well, I will deal with it on Tuesday then. I will deal with the bail application, if the officer can check that address to see whether it is an appropriate address, I will consider the bail application.

D **THE DEFENDANT:** This is why, I anticipated this, I said I want an address that they have already checked out and that’s 175 Cowbridge Road ...

JUDGE BIDDER: And you can check that address, if you would ...

E **THE DEFENDANT:** The victims have been evicted by a court and they know it and, therefore, I can get back into my own flat.

JUDGE BIDDER: I shall adjourn the bail application till then. That concludes the proceedings. Thank you very much indeed.

F **THE DEFENDANT:** Enid Blyton couldn’t do better, could she? Can I get my glasses from the gentleman in the Court before I go, because the prison will not let him post them or send them?

JUDGE BIDDER: Is there a gentleman who has got a set, a pair of glasses for him?

MEMBER OF THE PUBLIC: I have.

G **JUDGE BIDDER:** Right. You have got the glasses here?

MEMBER OF THE PUBLIC: Yes.

THE DEFENDANT: And can I have the legal papers you’ve got?

H

A **JUDGE BIDDER:** Have we got an usher, please? Could you take the glasses from the gentleman?

THE DEFENDANT: And could I have the legal papers? For three months we've been trying to get the legal papers into the prison. Could I have those, please?

B **JUDGE BIDDER:** Glasses, please.

MEMBER OF THE PUBLIC: Just the glasses.

JUDGE BIDDER: The glasses. You make application at the prison to put in the papers.

C **THE DEFENDANT:** We've done all that ...

JUDGE BIDDER: Is there anything other than the glasses?

THE DEFENDANT: For three months we've been doing that.

D **JUDGE BIDDER:** Thank you very much.

THE DEFENDANT: The lawyer went there and they wouldn't let him come and see me, Mr David Leathley, who should be here representing me.

E **JUDGE BIDDER:** Take Mr Kirk down, please, and an officer, could they please come back, check that the glasses, that there is nothing in the glasses or the glasses case. Can they hand them to him, please?

THE DEFENDANT: Oh, and just ... We have a witness today ...

F **JUDGE BIDDER:** Take him down, please.

THE DEFENDANT: ... who was in Court when Recorder Cooke promised to let me have those medical records of the 2nd December, your Honour.

G **JUDGE BIDDER:** The other officer can take the glasses, please. Officer. Yes. Thank you very much. Please, thank you ever so much. That is fine. Thank you very much. Right.

(11.03am)

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

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