IN THE CARDIFF CROWN COURT

BETWEEN: THE QUEEN

- V -

MAURICE JOHN KIRK

Case Ref: T20131144

DEFENCE STATEMENT AND/OR MOTION TO QUASH AND/OR PLEA OF DEMURRER

COUNT FOR BREACH OF RESTRAINING ORDER CONTRARY TO SECTION 5(5) and (6) OF THE PROTECTION FROM HARASSMENT ACT 1997

- 1. The Defendant is not guilty of the charge of Breach of Restraining Order contrary to section 5(5) of the Protection from Harassment Act 1997, in connection with allegations of breach of a restraining order imposed by Cardiff and the Vale Magistrates' Court on 11 December 2011.
- 2. The Defendant alleges and avers that he never knowingly published or allowed to be published the information and material as alleged by the Crown regarding Dr. Tegwin Williams on the web site entitled "kirkflyingvet.com" and/or that there was a "lawful excuse" for such publication in any event in the overall public interest thereby if in fact proved by the Crown.
- 3. Further, the Defendant alleges and avers that he was never in fact ever lawfully served with any restraining order at the said Cardiff and Vale Magistrates' Court as alleged or at all and that the previous prosecution witnesses against him in proceedings before His Honour Judge Curran at Cardiff Crown Court on 3 and 4 May 2012 committed perjury and lied and misled the jury thereby.
- 4. In particular, the Defendant was denied access to CCTV coverage of the cell area at the Cardiff and the Vale Magistrates' Court and the CPS failed in their duties of disclosure under sections 1 to 7A of the Criminal Procedure and Investigations Act 1996.

5. Any previous purported conviction by the Cardiff Crown Court before His Honour Judge Curran in May 2012 doesn't create any *issue estoppel* or *res judicata* in respect of the

present proceedings, and such doctrines are only applicable to civil proceedings.

COUNT FOR MAKING THREAT TO DAMAGE PROPERTY CONTRARY TO SECTION 2(A) OF THE CRIMINAL DAMAGE ACT 1971

6. The Defendant is not guilty of the charge of Making a Threat to Damage Property contrary

to section 2(a) of the Criminal Damage Act 1971, in connection with the allegation that he

threatened to burn down the house of Dr. Tegwin Williams.

7. The Defendant alleges and avers if found as of fact to have made the alleged threat, that he

didn't therefore intend that the recipient of the alleged threat would fear that the threat

would be carried out, as required by section 2(a) of the Criminal Damage Act 1971.

8. Further, the alleged statement made by the Defendant didn't amount to a direct threat to

damage property as a matter of law.

9. The alleged statement allegedly made by the Defendant, taken at its highest, amounted to a

hypothetical statement of possible intention and/or a question as to how the South Wales

police would react if the Defendant were to burn down Dr. Tegwin Williams's house,

thereby not constituting a direct or immediate threat to damage property which is what is

clearly contemplated by <u>section 2(a) of the Criminal Damage Act 1971</u>.

10. (See R. v. Cakmak [2002] 2 Cr. App. R. 10.)

11. The Defendant therefore moves to quash the said charge of Making a Threat to Damage

Property contrary to section 2(a) of the Criminal Damage Act 1971.

12. In the premises, the charge of Making a Threat to Damage Property contrary to section

2(a) of the Criminal Damage Act 1971 should either be quashed or withdrawn from the

jury, as in all of the circumstances as a matter of law, it would be unsafe for the said charge

to be considered by the jury accordingly.

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Dated 27 December 2013

Signed

MAURICE JOHN KIRK

Defendant

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BETWEEN:

THE QUEEN

- V -

MAURICE JOHN KIRK

DEFENCE STATEMENT AND/OR MOTION TO QUASH AND/OR PLEA OF DEMURRER

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