

3rd May 2012

EVIDENCE

LEE BARKER – sworn

Examination-in-chief by MR EVANS

(10.37 am)

MR EVANS: Could I have your full name please?

THE WITNESS: Lee Barker.

Q: Are you employed, Mr Barker?

A: Yes, I am.

Q: By whom?

A: (Inaudible)

Q: In what capacity?

A: I'm the supervisory custody officer based at Cardiff Magistrates Court.

Q: Generally, what does your job entail?

A: Overseeing the daily running of the custody suite, ensuring that prisoners are looked after, getting court results and also transportation of prisoners back and forth to prison.

Q: Were you on duty on 1st December of last year?

A: Yes, I was.

Q: Did you deal with Mr Kirk on that day?

A: Yes, I did.

Q: In what capacity did you deal with Mr Kirk?

A: He came from the prison on the 1st, he had a case dealt with and later on during the day I had a phone call from the court clerk who dealt with him in the case, asking me if a

A restraining order could be handed to Mr Kirk. Due to the nature of the custody suite, authorisation has got to be granted for the clerk to come up ...

JUDGE CURRAN: Could you go a bit slower please?

B **MR EVANS:** Terribly sorry. Mr Barker, a note is going to be taken by the learned judge and of course by Mr Kirk of what you say. Please keep what you have to say to a measured pace with some pauses. So I think you said you had received a phone call from the clerk of the court?

C **A:** Yes, Mr Mike Williams, who was stating that a restraining order had to be served on Mr Kirk and would it be possible for him to come to the custody suite to give the restraining order to him.

D **Q:** Pause there. How did you respond to that request?

A: I agreed to it. Mr Williams came up to the custody area; he had the restraining order in his hand and obviously due to the nature of the court clerk entering the cell area, (inaudible) hand Mr Kirk the restraining order, so Mr Williams would have no contact with Mr Kirk.

E **Q:** Pause there. How did Mr Williams react to that proposal?

F **A:** He agreed to this and he stated to me that he needed to witness me giving Mr Kirk the restraining order, so it was agreed that he would stand ... the court layout is that you have got an area where you walk out, then you have metal gates, so Mr Williams would stay this side of the gate and beyond the gate of the cell area where I would go to give Mr Kirk the restraining order.

G **Q:** I see, so Mr Williams waited back whilst you went forward into the cell complex to hand over the document?

A: That's correct.

Q: The documents in question, did you see those?

H

A **A:** It was a single sheet of paper, it was an official court paper with Breach of Restraining Order in bold letters across the top. The rest then was just a page of text.

Q: I wonder if Exhibit 1 could be shown to Mr Barker please.

(Exhibit handed to witness)

B **A:** Yes, that would something that I can recall, yes.

Q: So having been given that document by Mr Williams, what did you do?

C **A:** Proceeded to the cell that Mr Kirk was in, Cell 3, which was close to the gate area, opened the cell door, Mr Kirk came to the cell door. I handed him a copy of the restraining order and said, "This is a restraining order given by the court." Mr Kirk then took the restraining order from me and then I closed the cell door and walked back to ... Mr Williams was at the other side of the gate and then Mr Williams left the custody area.

D **MR KIRK:** Your Honour, I don't wish to interrupt, but I feel that that is too fast for me.

JUDGE CURRAN: What he is saying was that he proceeded to the cell, opened the door, you came to the cell door, he handed the document to you and said it was a restraining order from the court and Mr Williams then left the area. That is what you said, is it not?

E **A:** After closing the cell door, I went back to Mr Williams who then left the custody area.

MR EVANS: How far was Mr Williams from you and Mr Kirk at the time of handing over the document?

F **A:** Approximately 15, 20 feet.

Q: Can you relate that distance to anywhere in this courtroom?

G **A:** Um, I would say from here maybe to the door area at the back of the court there, just looking through the back.

Q: So this is from the witness box to the double doors at the back of the court?

H **A:** That's correct, yes.

A Q: Was there anything between Mr Williams and yourself and Mr Kirk?

A: The only thing there would have been would be the metal gate, which has rungs (inaudible) so you can actually see through the gate, so you would have a clear view.

B Q: So was anything obstructing his view?

A: Not that I could, not that I'm aware of but obviously I was in the cell area, I was actually handing the paper to Mr Kirk, so I couldn't say exactly where Mr Williams was stood, but he would have had a ... where he said he was going to stand, he would have had a clear

C view of what was going on.

Q: How sure are you the document that you handed to Mr Kirk, as you have described, was the document that you have seen there?

D A: Pretty sure.

Q: Did you in any way exchange the document you were provided with by Mr Williams with another document before handing it to Mr Kirk?

A: No, I didn't.

E Q: Did Mr Kirk respond to you when you informed him it was a restraining order by the court?

A: Not that I can recall, obviously when the cell was opened, then there's no need, obviously the cell door only stays open for a short time, there's no need to keep the cell door

F open, so I just handed him the paperwork and then closed the cell door.

Q: My question was did he say anything to you?

A: I'm not sure.

G Q: Was there any interaction between Mr Williams and Mr Kirk?

A: Nothing at all.

Q: After returning to Mr Williams, what happened then?

H

A **A:** Mr Williams then left the custody suite and then I carried on with my normal daily activities.

Q: Did you see what Mr Kirk did with the restraining order you gave him?

B **A:** No, I didn't.

Q: Did he take possession of it?

A: Yes, he did.

Q: And what do you mean by that?

C **A:** I handed the restraining order and so Mr Kirk physically took it from my hands and from that then I closed the cell door.

MR EVANS: Thank you, Mr Barker. If you stay there, I am sure there will be some more questions for you.

D **JUDGE CURRAN:** Mr Kirk, do you have any questions for the witness?

Cross-examination by MR KIRK

E **MR KIRK:** Do the jury have the statement that this gentleman made? I don't know what has been handed to the jury so far.

JUDGE CURRAN: The jury do not have copies of the statements made by the witnesses.

F **MR KIRK:** My application is that they have a copy at the appropriate stage, I would like it now, but before they retire for a verdict at least.

MR EVANS: Of course that statement needs to be put to Mr Barker by Mr Kirk, your Honour.

G **JUDGE CURRAN:** The statement that the witness made to the police is not actually the evidence. The evidence is what the witness has said in the witness box. That being said, if you apply to me for the jury to have copies of Mr Barker's statement, I will grant the application. I will see that it is copied and distributed to them. That is what you want, is it?

H

A **MR KIRK:** Yes.

JUDGE CURRAN: Very well. Would you like to continue with your cross-examination?

B **MR KIRK:** Just so that I understand, I have got to introduce it to the witness before they should really see it, but I am actually ahead of you, is that ... I am wishing to introduce it to the witness, that's what I should have said. Therefore I would like the jury to have it as soon as possible.

JUDGE CURRAN: Would you go and get it copied now please?

C **MR KIRK:** And Mr (inaudible) statement, MG11. I haven't even started cross-examining the main witness and he has now gone, but I do want his statement to be before the jury as soon as possible. If you are being so generous, I am pushing my luck with you now, your Honour, I would be grateful.

D **JUDGE CURRAN:** Very well.

MR KIRK: And may I have copies of everything too please, because I have nothing as you know. My McKenzie friend ...

E **JUDGE CURRAN:** Would you allow the McKenzie friend to enter the document please?

MR KIRK: Ah yes. Can he hand over legal papers? There is no point in him coming if he cannot give me the papers that are urgently needed for this trial.

F **JUDGE CURRAN:** Let him have the papers please.

(Documents handed)

G **MR KIRK:** Nobody else does any work around here, your Honour. The orders, I asked for public records to be available to the defendant. Whether you wish to allow them to go before the jury is a separate argument, but I am asking again for the (inaudible) MG11 statement of 19th June, when they asked that I be detained in custody for eight months.

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A **JUDGE CURRAN:** I have already indicated, Mr Kirk, as you know, that all material which is relevant to the issues in this case that the jury have to decide have been disclosed and the matters to which you refer are not relevant to the issues in this case and I have so ruled.

B **MR KIRK:** Your Honour, are you meaning you have read that witness statement, have you, because I haven't; it is so hot it has to come and it's relevant to why I'm in jail. Dr [REDACTED] [REDACTED] said that I have significant brain damage, I have a potential brain tumour and that I should be sectioned IPP under Section 47 of the 1983 Mental Health Act. We had the transcripts now here before His Honour Judge Bidder QC in this courtroom on 2nd December, when I was kept downstairs and Williams was giving this false evidence and if he is getting away with it with me, he's going to get away with it with a lot of other poor people, injured people, vulnerable people in South Wales, if you do not give me my public records.

C **JUDGE CURRAN:** Mr Kirk, will you please conduct your cross-examination of Mr Barker, if you have questions for him.

D **MR EVANS:** Your Honour, copies of Mr Barker's statement for the jury, there is a copy for E Mr Barker and there is a copy for Mr Kirk as well.

(Statement handed)

F **MR KIRK:** Your Honour, I need to refer to the 59-page magistrates' records with this witness. Could I have it before me so that I can ...

JUDGE CURRAN: Is there another copy available of the Magistrates Court file please? If so, hand it to Mr Kirk.

MR EVANS: He can have my copy.

G **MR KIRK:** Remember we are still waiting for the other part that he was made to identify on oath and that is the clerk of the court's (inaudible) of other records, like key evidence, for example.

H 8

A **JUDGE CURRAN:** Have you got any questions for Mr Barker?

B **MR KIRK:** No, I need the correct public document in front of me before ... I am facing a five-year prison sentence for this. Last time you had me in there, I was facing a ten-year prison sentence and eight, nine Crown Court cases I have won because I have made you hand over public court records, because I believe that's the rule of the law, the rule of law. It's call due process. You might want your own judicial system here in Wales, but the local people don't know what on earth is going on in our courts here, day after day, and they will lose the protection of London if you lot get your (inaudible) HM partnership buttoned up.

C **JUDGE CURRAN:** Thank you, Mr Kirk. Have you got any questions for Mr Barker?

MR KIRK: Yes, from public documents ...

D **JUDGE CURRAN:** There are no public documents which are relevant to his evidence, which concerns his evidence to the effect that he handed you the restraining order in the cells. If you dispute that, then you must ask him questions about it.

E **MR KIRK:** So you are refusing judgment of your judgment of 22nd February, whereby I could be legally represented and you ordered that I would be legally represented, because it's your signature on 22nd February 2012 judgment, in my absence, that Dr [REDACTED] was to give evidence for the defendant.

F **JUDGE CURRAN:** Just a moment, Mr Kirk. Are you asking to be legally represented?

MR KIRK: By the lawyer that this court instructed, by your orders, if I didn't give you the name by 9th March this year, that Dr [REDACTED] and others, this one included, was to be cross-examined or examined by the judge and on page 40 of this bundle ...

G **JUDGE CURRAN:** Mr Kirk ...

MR KIRK: I have numbered them, because they are for the Criminal Court of Appeal and the Human Rights Court, etcetera, rhubarb, rhubarb ...

H

A **JUDGE CURRAN:** Have you got any questions for Mr Barker?

MR KIRK: Yes.

JUDGE CURRAN: Well, will you ask them please?

B **MR KIRK:** Right. 47, but you see, I come in, I've had it taken off me, I've now got to find page 47. Well, I don't know where it is, without counting them all again; they're not in the same order any more.

JUDGE CURRAN: Have you got any questions for the witness, if so will you ask them?

C **MR KIRK:** Mr Barker, you are familiar with restraining orders?

THE WITNESS: Sorry, can you repeat the question?

D **Q:** Sorry, if I speak up, I'll be accused of being mentally whatever. I have to be very careful if I raise my voice. I've been removed from this court by raising my voice. Can you hear me at this level?

A: Yes, I can.

Q: More to the point, can you hear me at this level when I'm talking in that direction?

E **A:** Yes.

Q: Mr Barker, are you familiar with restraining orders?

F **A:** Not, obviously I'm not really trained to know the ins and outs, but I do know the piece of paper when it's got on there, "Restraining order."

Q: Prisoners in your custody ... have you ever seen a prisoner in your custody with a restraining order?

A: It has been known.

G **Q:** Have you personally seen a prisoner in the cells in your custody with a restraining order?

A: Yes.

H

A Q: How long ago?
A: Sometime back last year.
Q: How many (inaudible)?
A: In my experience, maybe about six.

B Q: Right. How long have you been in the business?
A: Eight years.
Q: Eight years? You were here when (inaudible)?

C A: No.
Q: You were not here in Cardiff when I had that 14-day nonsense?
A: No.

D Q: You were not? Right. So were you there on 4th April when I was assaulted and I was videoed by the camera directly over the door that is the subject of your evidence-in-chief?
A: On 4th April this year?
Q: Yes, when I was in custody under your care.

E A: Yes, I was.
Q: Right. And what was I asking to do when I was there? What was I asking? One single thing.

F A: You was asking to see the duty solicitor.
Q: I wanted to see a lawyer and the only lawyer available was the duty solicitor, right.

MR EVANS: Your Honour, I am concerned about how relevant this is to the issue in question.

G **JUDGE CURRAN:** It is not going to help if you interrupt actually.
MR KIRK: No, thank you.

H

A **JUDGE CURRAN:** Now would you like to move to the events of 1st December, Mr Kirk, which is what this case is about?

MR KIRK: There is a camera above the gate, isn't there?

B **A:** Yes.

Q: And it is not a dummy, is it?

A: No.

Q: Who controls it?

C **A:** HMCTS, which is Court Services.

Q: Yes, HM Partnership, yes, who really run the courts. They run the courts, don't they, not the judges?

D **A:** I can't comment ...

Q: I put it to you that you know full well that in this bundle here it states "Maurice Kirk is not to go before a lay magistrate, only before a District Judge." Who do you think ordered that to be written?

E **A:** That has got no relevance to my job within Cardiff Magistrates Court. My job is solely to look after prisoners whilst there and staff welfare.

F **Q:** If I asked for my medication now from the judge, which is similar to the medication which was needed in the machine-gun trial, I won't get it, will I?

A: Firstly, I'd have to get confirmation from the prison and second, as (inaudible) officers, we're not medically qualified to dispense any medication. All medication should be given prior to leaving the prison or from the pharmacy or (inaudible) from the prison, medication would be dispensed in a sealed bag with the person's name and the dosage and from that, that is the only way we are authorised to give any medication.

H

A Q: You say you had several prisoners today ... that I'm supposed to have had a visit from a Mr Williams.

A: I didn't say how many prisoners we had in.

B Q: So you were in charge?

A: Yes.

Q: Did you have your own key to open the gate?

A: Yes, I did.

C Q: What was the name of the custody officer who looked after all the prisoners?

A: For that day I couldn't say, but job roles vary from day to day.

Q: No, but it will be on the record, won't it? It would be on the record, wouldn't it?

D A: What record are you referring to?

Q: Well, what records do you keep? Five of you dragged me out of that cell on 4th April and it's all written and recorded and the police are investigating and the video is being used. You know that, don't you?

E A: No.

Q: But the very same thing happened on 1st December, didn't it? How did I eventually get ejected from the premises?

F A: You refused to leave your cell ...

Q: Why?

A: At that point I wasn't actually on duty when you left the cells; I had finished my duties at 14.40 and you refused to leave the cell because, my understanding was you wanted to go back to prison.

G Q: You left at 14.40?

A: That's correct.

H 13

A Q: Why do you know that time so accurately?
A: Because I keep a record of my hours.
Q: Have you got them with you?
A: No.

B Q: Could you get them over lunch?
A: Possibly not.
Q: Why not?
A: Because my record of my hours is in my own diary ...

C Q: No, no, but the system keeps your records as well, surely?
A: They do, but I would need authorisation to release them records (inaudible).
Q: So you mean you left at 14.40?
A: Correct.
Q: Yes, okay. Did you get an order for my release?
A: Obviously because you was in prison, then the prison would authorise your release and

E going back to (inaudible) which you also refused to sign ...
Q: Sorry ...
A: ... so that the prison actually ...

F Q: Sorry, you were going to get the permission from the prison, did you do that?
A: Any release has got to go through the prison; we cannot authorise any release, it's got to go through the prison.
Q: Yes, but did you do that?
A: Yes.

G Q: So you got release, so therefore I was due to be released before 14.40?
A: Correct.

H

A **Q:** Sorry, and you were saying something else after that; I can't you very well, but what did you say?

A: I said all releases only the prison authorise.

B **Q:** Yes, authorise. No, I am sorry, I interrupted you, I apologise, my brain doesn't work as fast as yours. You then raised another issue which appears very important which is why I am trying to remember what it was.

C **JUDGE CURRAN:** What he said was that you refused to leave the cell and said that you wanted to go back to the prison.

MR KIRK: Thank you, that was it. Why was I refusing to leave, if I wanted to go back to the prison?

D **A:** Obviously only you could answer that question.

JUDGE CURRAN: That is the point. Did Mr Kirk give a reason for refusing to leave the cell?

A: No, he didn't.

E **MR KIRK:** Well, hang on. Are you going to tell the truth to the judge or are you going to tell the truth to me? This is my case.

A: I am telling the truth.

F **Q:** Well, just now you said that I wouldn't I refused to leave the cell because I wanted to go back to prison.

A: That's the statement I recall you saying.

Q: Right. Who was with you when I said that, if I said that?

G **A:** I can't recall.

Q: Surely if you are saying, which I dispute, that you came to my cell, are you saying that you came to my cell with no other officers?

H 15

A A: Quite possibly, if officers were tied up doing other duties, then I haven't got a problem going to any defendant's cell.

Q: Have you ever had a problem with me at all?

B A: Numerous.

Q: Right, tell the jury what they are.

A: Um, Mr Kirk refusing to leave the cell ...

Q: Sorry?

C A: Mr Kirk refusing to leave the cell, Mr Kirk refusing to attend court, Mr Kirk demanding medication, demanding records ...

Q: What records?

A: Previously you've asked for custody records.

D Q: Well, I wanted to know what was going on in court, didn't I?

A: Refusing to be handcuffed, um, refusing to leave the dock ...

Q: Sorry, refusing to do what?

E A: Refusing to leave the dock ...

Q: Yes, okay. Is that it, roughly?

A: Roughly.

F Q: Very well. So you are telling me I refused to leave the cell because I wanted to go back to prison and you want the jury to believe that you alone opened my cell door ... by the way, which way does the door open?

A: It opens out.

G Q: Yes, left or right?

A: From left to right.

Q: Right, so therefore if Mr Williams was there, he was behind the door, wasn't he?

H

A **A:** Not unless as the door was opening he could have moved sideways which ...

Q: Sorry?

B **A:** If the door had opened out and Mr Williams couldn't see then, he could have ... there was plenty of space for him to move sideways to have a perfect view, with the angle going straight towards Mr Kirk's cell.

C **Q:** Okay, so have you got a pen and paper, let's ... unless you want a vue de justice, as we used to call it under Code Napoleon under French law, which as soon as it gets into this country the better, then the lawyers won't be bleeding the taxpayer quite so much. Can you draw a little map please of what we are talking about? You said 20 feet; that is actually 30 feet, but now you draw a map to fit what that distance is to where I am, to where the gate is, to where Mr Williams was. Just A4, borrow my pen.

D **JUDGE CURRAN:** You do not have to draw a sketch if you do not feel you are able to.

E **MR KIRK:** You are not letting him ... have you informed the jury that at any time they can send you as many notes as they like, do you remember the dangerous driving case, when they were upset about the signalling by the CPS and it stopped, didn't it? The jury are entitled to send you as many questions as they like and it's for you to decide whether the message is to be taken appropriately.

F **JUDGE CURRAN:** Have you any more questions for the witness?

MR KIRK: Yes, I have got plenty, so let us get it right. You are refusing him to ... you are weakening the prosecution's case if you do that. What are you after?

G **JUDGE CURRAN:** Mr Kirk, address your questions to the witness please and concentrate on the issues in the trial please.

MR KIRK: But there must be a map. Can you produce an official plan of the place where the alleged offence took place?

H

A **A:** No, I can't.

Q: No, but could it be quickly available before the end of today?

B **A:** I honestly couldn't say. Again I would have thought that obviously the court layouts or cell layouts, you'd have to go through different channels to release that information.

Q: Well, we have an intricate plan here of all the details. Mark who is on it. It's not to scale, I don't think, your Honour. Right, that is an approximate plan of the Magistrates Custody Suite opposite the prison. I see it every morning when I get up.

C **A:** Sorry, that to me is just two square boxes ...

Q: The T is the toilet area, the corridor is the corridor that you have measured and the dots down the side are the custody cells of each prisoner. I have putted a dotted line across somewhere where the grille, as we are calling it, is. Could you approximately mark, yes, do I have the cells on the correct side of the corridor? Do the doors all open to the left, meaning that anybody back behind the grille couldn't see somebody inside the cells, unless they are out in the corridor?

D

E **(Pause)**

A: The two lines going down is the gate, the X to the left is the position where you would be and the X to the right would be approximately where Mr Williams was and the space further down is the space where Mr Williams could have moved at any time to witness that paper being handed to you.

F

(Pause)

Q: Sorry, what did you say you said to me?

G **A:** The X to the left would be the cell you was located in ...

Q: No, sorry, what did you say to me when you say you handed me something? Can you say it very slowly please, so I can write it down?

H 18

A A: Something along the words of, "This is a restraining order from the court," or "I am handing you a restraining order from the court."

Q: How many documents did you have in your hand?

B A: Just the one sheet of A4 paper.

Q: Could I have his custody records? All right, I will ask him without for the moment, you wanted me to do something before I left the cell?

A: With reference to what?

C Q: Well, what do you normally do with restraining order ... oh sorry, have you been involved with restraining orders with prisoners?

A: All I did on this occasion was take the restraining order from the clerk, Mr Williams, and hand it to yourself.

D Q: And how many years ago did you do that before?

A: Um ...

Q: No, you didn't, you've never done that before in your life.

E A: Before now a clerk has come up the court (sic) and handed over restraining orders.

Q: How?

A: They have, yes.

F Q: How?

A: They have come to the cells and they have given it, but Mr Williams thought on this occasion it would be better for me to give it, the restraining order to yourself, and him to witness.

G Q: So it is Mr Williams now saying that it was his idea?

A: Well, a conversation had gone on between the two of us and it was agreed that I would give you the restraining order.

H 19

A **Q:** No, no, no. Who instigated the unusual procedure to be varied when the judge had ordered that he was to personally serve it on me?

A: Again it was agreed between myself and Mr Williams.

B **Q:** Sorry?

A: It was agreed between myself and Mr Williams.

Q: No, who changed the judge's order? Was it him or ...

C **A:** I wasn't present when the judge's order was made so I couldn't say who made that decision.

Q: Well somebody, I think the jury heard it ...

D **JUDGE CURRAN:** I think what Mr Kirk is asking you is whose idea was it for you to give the document to Mr Kirk as opposed to Mr Williams himself?

A: It was just agreed between myself and Mr Williams.

JUDGE CURRAN: Thank you.

E **A:** He was happy to give me the restraining order and he was happy for me to give it to Mr Kirk.

MR KIRK: That is irregular, you had never heard of that before, had you?

A: It's not unheard of.

F **Q:** You have never seen it though?

A: Again, it's not unheard of.

Q: No, but where did you get that idea from?

G **A:** Again, due to the court obviously, the position of the court clerk against the defendant, sometimes it's not good to have close contact because you don't know how the defendant is going to react to the clerk.

H

A Q: Right. Is there any history (inaudible) that is suggesting that I have had any disagreement with Mr Michael Williams?

A: I had heard of you being volatile in court and calling the clerk, court officials certain names and trying to disrupt court hearings.

B Q: You are a witness to what?

A: I have heard that ...

C Q: No, no, no, not hearsay. Are you a witness to anything relating to me inside Magistrates Courts anywhere in the land to suggest that Mr Williams would want the judge's order to be varied to such an extent that you would enter my cell on your own, leaving all the gates open with me not in handcuffs ...

D A: The gates were not open, it was just the cell door that was open.

Q: You mean the grille wasn't open?

A: That was locked.

Q: Who locked it?

E A: Myself, standard procedure.

Q: Are you trying to kid us that there were no other officers ...

A: There were probably officers in the area going about their normal duties as per usual.

F Q: But Mr Williams said he looked, the gate was open.

A: The gate would have been locked.

Q: Yes, he said it was open. We can play the tape back if you don't believe me.

A: The cell door would have been open but the gate would have been locked.

G Q: Oh, is that what he meant?

A: Because the cell would have been open for me to hand the paperwork, but all other gates and cell doors remain locked throughout the day.

H 21

A Q: So what cell number was I in?
A: I think, well it's cell number 3.
Q: Sorry?
A: Cell number 3.

B Q: Well, it is the (inaudible) cell, isn't it? It's for (inaudible) people who have their very own camera in the cell, don't they?
A: It's often called an observation cell.

C Q: Yes, but it has its own camera in it, doesn't it?
A: Correct.
Q: You have a monitor in your office?
A: Correct.

D Q: You have never let me, in the last ten years, to be in any other cell, have you?
A: Yes, you have been in Cell 2 previously.
Q: Oh right, I correct myself, you might be right. So you are saying now then this vue de

E justice may well be an application by the way this case is going. You are saying that Mr Williams was behind the grille but was able to see me in the cell?
A: He would have actually seen, from his position, then he would have seen me handing you the ...

F Q: No, could he have seen me at all?
A: Well, I was at the cell door, so I would have been facing this way and Mr Williams would have been that way.

G Q: Did you see him though?
A: I didn't see him, because I was handing you the paperwork.
Q: So how do you know he was there?

H

A A: Because Mr Williams told me he had to witness this happening.
Q: He what?
A: Mr Williams that it had to be, he had to witness me giving you the paperwork.
B Q: I know, but you didn't actually see him there when you gave the papers to me.
A: As I said, I was opening the cell door, I would have been facing you this way and Mr Williams would have been looking from that angle, looking up this way.
Q: If he was there.
C A: Mr Williams was there.
Q: When you gave the papers to me?
A: Yes.
D Q: Was that the only time that you gave papers to me that day?
A: You might have asked for legal papers throughout the morning.
Q: What?
A: You might have asked for legal papers throughout the morning.
E Q: Would that have been recorded?
A: Usually, yes.
Q: Would it have been recorded that I got legal papers?
F A: If we were giving you legal papers then, yes, it would have been recorded.
Q: Sorry?
A: If you were given legal papers or if it was deemed to be, (inaudible) then yes, it would have been recorded.
G Q: Do you mean there is a record if I got legal papers?
A: Yes.
Q: Right. To get legal papers you'd have to break open a sealed legal bag?

H

A **A:** That's correct.

Q: So it would be recorded, therefore, that I'd got some legal papers that you cannot make
up later in a court of law, six months later ...

B **A:** That's correct.

Q: I put it to you, Mr Barker, that the size of those big doors, Mr Williams could not have
seen me, even if he was right up against the end of the grille, to see me in Cell 3. Isn't that
right?

C **A:** I would say that if Mr Williams couldn't see, then there was enough room for him to
come, to position himself to see me give you the paperwork in Cell 3.

Q: I never left that cell, did I?

D **A:** The only time you left the cell was for you to go to the toilet or go to court, other than
that, then no, you were in your cell.

Q: Yes. Your statement says, "I opened the cell door and spoke to Maurice Kirk, saying,
"There's a copy of your restraining order." I gave a copy to Kirk and left the cell." Do you
E still stand by that statement?

A: Yes, that's my statement.

Q: "This took place mid-afternoon," what you call mid-afternoon. Do you mean you left
F immediately after that? You are saying 2.40 ...

A: It wouldn't have been much longer after that.

Q: Right. Why is that then that Mr Williams said that there were several forms that he
had, several information that he had for you, for me, I mean.

G **JUDGE CURRAN:** He did not say several; he said two.

A: The top sheet I recall seeing was ...

Q: And that is a very critical question ...

H

A **A:** With both letters (inaudible) restraining order.

Q: Sorry?

B **A:** All I recall was Mr Williams handing me a sheet of paper, there possibly were two, and I remember seeing “Restraining order,” in bold letters and Mr Williams just asked me would I pass that to Mr Kirk, which I did.

Q: So why does your custody record, contemporaneous note, why does your custody record have a tale completely different to what you are giving me?

C **A:** I couldn’t say, but that was what happened, I was given the sheets of paper and I was told, “Would you please hand this to Mr Kirk?” I came down to your cell, handed you the paperwork, shut the cell door and came away.

D **Q:** Well, could you look at that document now please?

A: Which?

Q: Your record of what goes on with prisoners under your care.

MR EVANS: Your Honour, I am assuming Mr Kirk is referring to this document; I have

E copies for the jury as well.

JUDGE CURRAN: Thank you.

MR EVANS: The original going to the witness and ...

F **MR KIRK:** Could I have a copy of the statement of Mr Williams please?

JUDGE CURRAN: Can I have a copy as well, and one for Mr Kirk?

MR EVANS: Six for the jury there, one for the learned judge ...

(Statement handed)

G **MR EVANS:** Exhibit 3, your Honour. I suppose the statement of Mr Barker should be Exhibit 4 as well, your Honour.

MR KIRK: Sorry, what was that?

H

A **MR EVANS:** I am numbering the exhibits, Mr Kirk.

MR KIRK: Well, could they be properly numbered and signatored (sic) and certified true copies please? These documents are going way away across the channel and they must look like they used to look, as proper court documents instead of not as I have been handed so far.
B Your Honour, I wonder if you could tell me what Mr Williams said he heard somebody say from somewhere. We don't seem to have a copy of it, it doesn't seem to be quite in agreement with this ... it is critical to this case.

C **JUDGE CURRAN:** Mr Williams' evidence was to this effect ...

MR KIRK: I only want to know what he says he heard someone say ...

JUDGE CURRAN: I am just about to answer the question, Mr Kirk, if you will allow me to.
D What Mr Williams' evidence was, was this: "I heard Mr Barker say, "I've been asked to serve these forms on you by the court. I saw both forms handed to Mr Kirk by Mr Barker. I saw that myself."

MR KIRK: Well, that's nothing like what you've told us, is it?

E **A:** I would say on the lines of, yes.

Q: Sorry?

A: I would say very similar, just worded slightly different but the same, the same principle, Mr Williams giving me the paperwork to hand to yourself, which I did.
F

Q: How did I leave at the end of the day?

A: At the end of the day you had to be removed from the cell because you refused to leave and when I say removed, it was two officers who would have picked Mr Kirk from under the arms and taken him out to the exit doors.
G

Q: I left the building with crutches and a wheelchair and handcuffs, didn't I?

A: It wouldn't have been with handcuffs, no and I don't recall a wheelchair.

H 26

A Q: You have a camera at the exit of your custody suite, don't you?
A: Not on the exit, no.

B Q: At the public counter, where people, friends come and try and see their loved ones whilst in your care ...
A: There is no camera at that point, no.

C Q: There is a blue funnel up there, is it a dummy or is it a camera?
A: If there is a camera there, then that is not linked to our CCTV; that could be done for security, which is a different issue to our nature of work.

D Q: So you mean I have been applying to the wrong department?
A: I couldn't answer that.

E Q: So I had a letter from the court, from the Magistrates Court last week, the week before, saying that you had custody and care of the video that would have covered everything that happened on 1st December, each time I was taken to court, each time I've been there, and any other incident that you wish to fabricate relating to a breach of a restraining order. That would all have been caught on camera, wouldn't it?
A: All the camera positions that are within the custody, there's no cameras outside of the custody suite.

F Q: Right, so at least mark on this map, and mark who's who on those crosses please. You do not have to (inaudible) to make the map, but you could at least identify what's the corridor and which areas Mr Williams stayed. Could you mark the gate, for example? Shall we call it the gate?
A: The gate as in the exit to the custody suite or gate ...

G Q: The gate which Mr Williams raised about it being not locked; just put an arrow to the gate without upsetting the plan, for example, may I suggest?

H

A Q: What else did you want on there, sorry?

A: Where my cell number 3 might have been.

(Both parties talking at once – inaudible)

B Q: So put MJK there, and can you mark where Mr Williams was?

A: As I have already done.

Q: Yes. So at what time was he there? He came down the stairs, sorry, up the stairs, you had a conversation in the office area, is that right?

C A: No, Mr Williams rang the custody suite and informed me that the restraining order had to be served on Mr Kirk. He asked was it okay to come up into the custody area, to which I agreed and then I can't recall if it was said on the phone that I would give the restraining order to Mr Kirk or if it was when Mr Williams actually came into the custody suite.

D Q: Yes, so he comes in, so which door ... he comes in ...

A: I didn't actually let Mr Williams in so I couldn't say if he came from the court side or from outside of the custody suite. I didn't actually let Mr Williams in.

E Q: Right, so we are only concerned about when you first met him to the time that he left, so when you first saw him, he was standing where?

A: He would come to the, to the office, which again is in the custody suite.

F Q: And from the office he went to where?

A: He would have come to the office area where I would have met him.

Q: Yes. Where did he go between the office where you had your conversation to when you say he could see through the grille at me?

G A: He wouldn't have gone anywhere, it's all within one, within one area.

Q: So he stood outside or inside the glass-covered office or was in the office ...

A: He was outside of the office.

H 28

A **Q:** Right, where you have marked on that map?

A: Correct.

B **Q:** So he came in from one door or the other, you saw him in the office or outside the office, but you then had a conversation with him and he virtually stayed right where he was for you to then mark his final position, which is of importance to this jury, which is on that map?

C **A:** Well, that's the position where I left him but he could have moved to gain accessibility to me, witnessing it.

Q: So he could have moved to a better position than that?

A: Yes.

D **MR KIRK:** Right, mark the better position and put a 2 beside it please. Your Honour, my very able McKenzie friend has raised evidence that he thought he heard, and it is proper for me to say it because it could confuse the jury. Could I have it from you please that the statement indicates that Lee Barker wanted him to hide in a prison cell and wait until I was doing whatever and to poke his head out the door to witness whatever they were going to do between them? Could you please confirm in your note (inaudible) that Mr Barker asked Mr Williams to go into an empty cell and hide?

E **JUDGE CURRAN:** Which part of Mr Williams' evidence do you want me to remind the jury of, Mr Kirk?

F **MR KIRK:** Well, his statement at this stage (inaudible) to go into an empty cell. I am sorry, your Honour, this is getting (inaudible), the whole thing, I want a transcript ...

G **JUDGE CURRAN:** What Mr Williams told the jury yesterday afternoon, Mr Kirk, was this: "I waited for the staff to prepare it," that is the restraint order, "and then went to cells myself at about 2.10. I spoke to the supervisor, Lee Barker, and asked if I could serve the restraint

H

A order on the defendant. Mr Barker said he was in the toilet and said he would prefer to serve
the order himself so the defendant would not be antagonised by my presence. I agreed,
provided I could observe the order being served and he agreed and asked me to wait in an
B empty cell. I heard the defendant coming down the corridor and I heard Mr Barker say, "I've
been asked to serve these forms on you." I saw Mr Barker hand the forms to the defendant
myself. The other form was a copy of the options for paying the costs ordered by the District
C Judge. I don't believe the defendant knew of my presence. I didn't see him look in my
direction at any time. I then left the cell area." That was Mr Williams' evidence.

MR KIRK: So what are your records about me having to sign a licence?

A: On release from the prison you are required to sign a licence before you are released.
D That licence, once you have signed it, is then faxed back to the prison and when the prison
receive that, then the court, the custody suite can give authorisation for your release.

Q: You mean I have to sign a piece of paper to leave prison?

A: That is correct.

Q: And if I refuse?

A: Then that goes into the hands of the prison, then obviously that would hold up your
E release.

Q: Well, for how long?

A: Again, that would be in the hands of the prison.

Q: Well, it was four hours, wasn't it?

A: Sometimes the licence does take a long time ...

JUDGE CURRAN: The difficulty about your asking Mr Barker about that is that his
G evidence ...

MR KIRK: I know what ...

H 30

A **JUDGE CURRAN:** Just a moment, Mr Kirk, listen to me please.

MR KIRK: You are (inaudible) my cross-examination.

B **JUDGE CURRAN:** Mr Barker says that he left the cells at 2.40; that was substantially before the time at which you ultimately were escorted out from them. According to the record, it was five past five when you were escorted out of the cell. Mr Barker was not there then, I presume?

C **A:** That's correct. In fact, my manager had arrived at that point and then she took over, the police were informed on how was the best way to remove Mr Kirk from the cells.

JUDGE CURRAN: But you are asking the witness about things which were happening after he had left the cell complex and about which he has no direct knowledge, Mr Kirk.

D **MR KIRK:** Mr Barker, some of my main witnesses have already given evidence on oath in various court cases prior to this, on the very issues that should be before the jury and they are all recorded on public record, in Magistrates and Crown Court transcripts. We have it on tape as well. The court, sorry, the jury has heard that Mr Williams said that I was free to go before one o'clock, is that right? One o'clock, free to go.

E **A:** That is what the court states, but when you're in prison ...

F **Q:** I wasn't in prison, I was under your custody, I'd been signed out on (inaudible), hadn't I?

A: Until the Governor of the prison authorises your release, you still come under prison custody.

G **Q:** Bollocks. You know that when a prisoner leaves a prison he is discharged on the orders of a court, if I am tied up with a current remand warrant, is that not right?

A: Sorry, can you repeat that?

H

A **Q:** A prisoner is either under the care of the prison or a court or you people in transit, is that the simplest way to put it?

A: Yes.

B **Q:** Right. You knew that I was the first prisoner, virtually in living memory, to get ... have you ever seen a prisoner in your custody in possession of his own remand warrant?

A: The remand warrant would be issued by ...

Q: Yes or no?

C **A:** I don't recall you seeing a remand warrant but there's so much paper that comes through there, Mr Kirk, I can't recall all the paperwork that you have but ...

JUDGE CURRAN: I am again going to intervene and insist that you ...

D **MR KIRK:** (Inaudible)

JUDGE CURRAN: Any remaining that you have (inaudible) ... will you direct your questions please to the issue in the case, which is whether or not you were served with a restraint order.

E **MR KIRK:** Mr Williams said, in his statement he's written, he might have said it as well, I don't know, he said that he rang somebody and that I had said that at about one o'clock in the afternoon, after the case was disposed of by the learned District Judge John Charles
F (inaudible) Mr Williams said in his statement, on the evidence of the other so-called purported eyewitness, he is no longer purported, he has given evidence on oath, the defendant ... here we go, page 2, "As Mr Kirk was not legally represented," well, I was legally represented, wasn't I, the record in here is that the court contacted my lawyers who had written to the court,
G dated the 15th, there's a copy of it in here, 15th November, complaining about the appalling conditions I was being treated in, especially as I was sectioned by Dr [REDACTED] I shouldn't be giving evidence or being cross-examined at all. You were aware of that, because

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A that, because it's in your records, isn't that right?

A: All we get if the prisoner comes from prison, we get a name and a prison number, (inaudible) appear at the court. If they appear at court, they come into our custody, (inaudible) we have some procedures to follow. We do not get involved in who is able or fit enough to attend court; that is solely down to the prison.

B Q: But it's written on your prisoner escort record document, which has now been photocopied and has been put in front of you and the original document, which must go before the jury ...

C A: Sorry, where does it say that he was not fit to attend court?

D Q: No, no, your escort records, is it given a name or a number, what's this called?

A: It's referred to as a PER, Prisoner Escort Record.

D Q: Good, right, not a bad guess. The top copy is white, isn't it?

A: Correct.

Q: That is the original copy?

E A: Correct.

Q: At my old school, the best rugby school in the West Country in my day, I was told never sign anything unless it's a (inaudible). Where is the original document now likely to be to have kept a log of exactly what they want when I was in your care, when Mr Williams did or did not come down to the cells, transfer documents or did not for you to then say, although you said contrary evidence to what he has said, you have said you gave me something. Where is that original log now? Where would it be?

F A: I would guess sent down to our main depot in Bridgend, sometimes it then gets sent on to the Home Office and we retain copies which are kept and which is the original copy which I have here.

H 33

A Q: Well, what colour is the copy you keep?

A: We keep the pink copy.

Q: Who keeps the blue copy?

B A: It could be the prison.

Q: Well, it is the prison, you know it is and I have interrogated them at length for six months about this. You know that, don't you? You go there every day moving prisoners ...

A: I don't actually go to the prison.

C Q: You know a lot more about the evidence that this jury should be seeing or ...

A: I don't go to the prison; I am permanently based in the court and my day to day, I take the pink copy of every prisoner.

D **MR KIRK:** Your Honour, I want the original document to be given to this jury. I'm talking about the restraining order, I'm talking about the exhibits that the next witnesses will be producing, the document of the clerk of the court's records, which still haven't been released, you've only given me 59 pages, so at least another 30. **Then of course there is the CPS**

E **original records that they are hiding away, they say, up in Merthyr Tydfil.** I need those to be put before this witness and I have a question which may shorten this trial. Already Mr Williams has said, "Mr Kirk was not legally represented." I telephoned those instructions to (inaudible) officer in the cells. That would have been recorded on your records, wouldn't it?

F A: Not necessarily. We only record prisoner movements, times that they went to the toilet, times they were given a meal, times they go to court, times they come back from court, the outcome of court and then what time they are released or what time they are handed over
G to be transported back to the prison, or if they do have anyone visit, then we record what legal room they are going to and just general movements within our custody suite. That is all we have been recording.

H 34

A **Q:** "... and he has said he did not wish to come to the courtroom for sentence and that he did not intend to comply with any restraining order." This was obviously around one o'clock or before two o'clock.

B **A:** On numerous occasions Mr Kirk refuses to attend court. He refuses to be handcuffed to court; that is our company policy, where all defendants are handcuffed from the cell area to the court area. On numerous occasions Mr Kirk refuses to attend court.

C **Q:** So could you answer the question please, which is: there is evidence there that the restraining order had already been discussed with you.

A: Sorry, whereabouts is that?

D **JUDGE CURRAN:** It is not in the document. Mr Williams' evidence was to the effect that he had spoken to you.

MR KIRK: His evidence, which is very important ...

A: That's correct, yes, but due to the security reasons, obviously Mr Williams rang in advance asking if he could come into the custody area.

E **Q:** Oh, you mean he only phoned once and that was it?

A: Yes, he rang once and asked was it okay if he could come into the custody area to serve a restraining order, to which I agreed.

F **Q:** Are you sure that therefore the court only contacted your department once relating to the restraining order?

G **A:** If there was, then I did not take that telephone call or I did not know anything about that. The only, I can't be in every place at one time; I have other duties which I have to attend to as well. I don't actually take every single phone call. I don't deal with every single prisoner. I don't write on every single document.

H

A Q: Let us get this absolutely clear. So that phone call Mr Williams has identified, that I
have already apparently been told, so I therefore would have had to have been told about the
restraining order in order for your officer or yourself, who I suspect it really is, I can't prove it,
B not until we get the rota of everybody who was employed there, and we'll get that in due
course, that somebody must have told me about a restraining order in order for Mr Williams to
have any credibility or believe the information that he says he heard from one of your mates?

C A: I can only presume that during the outcome in court, with whatever outcome that was,
I can only presume, and I wasn't in court with Mr Kirk at that time, that the restraining order
would have been issued upon him, but I was not present in court if that comment was made in
court. We don't get involved with any court decisions; we just listen to the outcome and then,
D on return to the cells, the (inaudible) is relayed.

E Q: So why is there nothing on your contemporaneous records, Home Office regulations,
against (inaudible) anything at all, anything at all that could remotely be related to Mr
Williams coming down in a most irregular manner and you and him, in an even more irregular
F manner, taking it off him, him hiding in a cell so he can't be seen, he could not have seen who
was in Cell 3. I put it to you, whether I was in Cell 3 or not, he could not have seen me and he
said nothing about my replying, so he couldn't have identified me by me speaking, and there is
still nothing in the records that relates to a restraining order being served in a most irregular
manner. Why?

G A: Because Mr Williams said he would make the record, it would have to go on Mr
Kirk's case file, to which then I didn't enter any (inaudible) onto there and that he could
record that.

H **MR KIRK:** Thank you. Could we adjourn, your Honour? The document that we are really
after is the court records. You have given me 59 pages and I am most grateful for your

A patience with such an argumentative bugger like myself, I mean that. Can we now have the
public records, because I always win my cases by disclosure being beaten out of it? If I don't
get disclosure, I run a serious risk of a five-year prison sentence. Can I now have the
B document that he has directly identified which is in the possession of Her Majesty the Queen
being represented by this little shit?

JUDGE CURRAN: Mr Kirk, I really do object most strongly to language like that being
used in this court.

C **MR KIRK:** Even when it is appropriate?

JUDGE CURRAN: It is never appropriate to use language like that, Mr Kirk, and you know
it.

D **MR KIRK:** Am I going to have a copy of my taped interview before we play it to the jury?

JUDGE CURRAN: A copy of your taped interview will be supplied to you and to the
members of the jury when it is being played to the jury.

E **MR KIRK:** No, I am entitled to have it at arraignment and I have had to plead not guilty to
start this trial this afternoon and I should have served, under the rules, all the exhibits and also,
unless they arise from cross-examination, I should have been given the videos, the videos of
the alleged offence of harassment, all of which were promised and still have not been handed.

F I asked 15 police officers in full view of cameras for their advice about whether the main
issue in this, that that poster identifying that rogue doctor, stated that I had significant brain
damage and I should be sectioned to Broadmoor. Now I am entitled, before this case goes any
further, to have those documents to which the prosecution rely, by identifying them as exhibits
G and if you're going to show any videos, I want those videos and I want them to hotfoot out of
here (inaudible). I am entitled, am I not entitled to those documents in exhibits and videos?

H

A **JUDGE CURRAN:** The witness statements and exhibits were served upon you months ago,
Mr Kirk, as you well know.

MR KIRK: No, they weren't.

B **JUDGE CURRAN:** Mr Barker can now leave the witness box, thank you.

MR KIRK: The exhibits were not. I have not finished with this witness; I need at least
another 30 minutes.

JUDGE CURRAN: I am afraid that is it, Mr Kirk.

C **MR KIRK:** You always leave the punch to the end, do you know that? Have I got to start
with the next one by giving the punch at the beginning?

(11.56 am)

(Witness released)

D

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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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