DRAFTED 29th June 2012 Before Transcripts Were Available

IN THE COURT OF APPEAL

(CRIMINAL DIVISION)

THE QUEEN

- v -

MAURICE JOHN KIRK

GROUNDS OF APPEAL

AGAINST CONVICTION

"REAL POSSIBILITY" OF ACTUAL AND/OR PERCEIVED PREJUDICE AND/OR BIAS OF HIS HONOUR JUDGE CURRAN

1. His Honour Judge Curran ought to have recused himself from presiding over the trial of the Appellant as he had previously stayed the Appellant's application to the Cardiff Administrative Court for Judicial Review of the Appellant's appeal at Cardiff Crown Court, Case A20110290, on 1st March 2012 and his conviction and sentance of harassment, contrary to the Section 2 of Protection from Harassment Act 1997, at Cardiff Magistrates Court, on 1st December 2011, the subject of the Restraining Order allegedly breached in this present case.

2. Whilst accepting that the issues of fact in the trial were for the jury, His Honour Judge Curran made a number of rulings that erred in law similar if not identical to those by

both District Judge John Charles, at Cardiff Magistrates and his Honour Judge PD Hughes QC, in its appeal, at Cardiff Crown Court.

3. Subsequently, failed disclosure of evidence, by way of court and custody documents and cctv footage, all under the control of the South Wales Police, caused the Appellant, in each of these court cases, compounded the reasons for refusal of access to his own legal papers in both court and prison and be given any facilities, at all, to either interview or call his own witnesses.

4. All prosecution witnesses, in the two previous above mentioned trials, were prevented from being cross examined by the Claimant while the main witness, a doctor, in the jury trial, subject to this appeal, was denied the Claimant's required examination or cross examination, contrary to His Honour Judge Curran QC's 22nd February 2012 Court Order.

5. This was further compounded following, first by the failure to attend of the court instructed barrister, to cross examine the witness(es) 'on the Appellant's behalf ', under Section 36 of Youth and Justice and Criminal Evidence Act 1999.

6. His Honour Judge Hugh Davies QC's April 2012 Court Order caused this main prosecution witness to be removed from the witness list, as irrelevant and so facilitate the Appellant's immediate release from prison.

7. For the prosecution barrister, on 2nd May 2012, to then open the prosecution's case by stating, before the jury and the trial judge, that the South Wales Police had 'just decided' not to now call the doctor to give evidence, was nothing short of a criminal offence.

8. For the Appellant then not to be allowed to call this already empanelled prosecution witness, being 'anybody's property', as his psychiatrist, expert witness and/or witness of fact and/or as his character witness, was a further abuse.

9. Before His Honour Judge Hugh Davies QC the prosecution had admitted it was only by the citing of this same witness, in all these three hearings, 2009 WW1Machine Gun trial and numerously related other summary hearings, by the South Wales Police, that the Crown Prosecution Service had been able to be successful, for the South Wales Police,

to oppose the Appellant's preparation of both his civil and criminal cases, against the Chief Constable, out of custody, since 8am 22nd June 2009.

10. By April 2012 the Appellant had almost served the pre arranged prison sentence of nine months, in any event, when bail would have been granted, by His Honour Judge Hugh Davies QC, had the Appellant been so minded as to apply.

11. There was a "real possibility" of actual and/or perceived bias, as a result of His Honour Judge Curran presiding over the Appellant's trial, when the learned Judge had already stayed the Appellant's application for permission to apply for Judicial Review of the dismissal of his appeal against conviction, on 2 March 2012, relating to the conviction in respect of which the Restraining Order, imposed by Cardiff Magistrates', which was alleged to have been now breached.

12. The certificate of conviction, at last released to the Appellant by HM Court and Tribunals Service, states the 1st or 9th December 2011 dated Restraining Order was dependent upon the conviction for a breach in Section 2 of the said Act but Prosecution Exhibit 1 indicates the 'served order' on the Appellant was that from a Section 4 Restraining Order dated 8th December 2011.

13. His Honour's failure to conduct a 'Vue de Justice' with the jury, following the custody officers in the both courts, employed by GEOamey Custody Services Ltd, confiscation of the Appellant's scale drawings of the Cardiff magistrates custody suite, where the alleged offence took place was an abuse in law.

14. His Honour's failure to grant an adjournment for medical attention or even access to his medication in the cells below, following GEOamey Custody Services' vicious assaults upon the Appellant, both on 1st December 2011 and 4th April 2012, was an abuse of process.

15. His Honour's failure to allow the Appellant sight of all the prosecution exhibits, eg website blog of 4th December 2011 on www.kirkflyingvet.com, on arrest, before caution and/or during the trial and sight of various jury 'notes', passed to His Honour, following the Appellant's suggestion, in the course of the trial, was also wrong in law.

16. His Honour's failure to ever allow the Appellant sight of the original or sight of a certified true copy, of the Restraining Order, allegedly served on him, was also wrong in law.

17. His Honour's failure to order HM Prison, Cardiff to release the Appellant's legal papers and posted in court exhibits by his Mackenzie Friend, allow him proper access to facilities, in order to conduct is defence did nothing but to compound his difficulties and were further breaches in his rights under the Rule of Law.

18. In the alternative, at the appropriate time, His Honour failed to properly consider granting bail, out of custody, in the light of these apparent extreme and unusual circumstances, unable to find local legal representation, as was indicated by His Honour Judge Hugh Davies QC, on 7th April 2012, in Cardiff Crown Court and by His Honour Judge Lambert in Bristol Crown Court, during an apparent application for bail well outside South Wales.

19. The Appellant therefore had an unfair trial and/or the said trial took place in breach of article 6(1) of the ECHR as incorporated by schedule 1 of the Human Rights Act 1998.

"REAL POSSIBILITY" OF ACTUAL AND/OR PERCEIVED PREJUDICE AND/OR BIAS OF MR DAVID GARETH EVANS OF COUNSEL PROSECUTING FOR THE SOUTH WALES POLICE

1. Mr. David Gareth Evans of counsel ought not to have prosecuted the case against the Appellant as he was a potential prosecution or defence witness relating to the drawing up and purported 'service of a 'Restraining Order' signed? by District Judge Charles at Cardiff Magistrates' Court on 1st December 2011.

2. An approach by the Appellant's Mackenzie Friend caused the CPS barrister to produce another version of Prosecution Exhibit One, 'Restraining Order', not date stamped by the court. Prosecution Exhibit One included the court date stamp 9th Dec 2011.

3. The prosecution barrister admitted, before the jury, a 'draught' Restraining Order did still exist and was ordered to produce it, by the following day, by His Honour Judge John Curran.

4. There was discussion, quite wrongly before the jury, as to whether Mr. Evans would be called as a witness relating to the 'drawing up' of the 'Restraining Order and he indicated to His Honour Judge Curran that he would have to "seek advice from his professional body the Bar Council for England and Wales".

5. The court heard no more so the Appellant called him as a defence witness and was refused.

6. The Appellant was refused an adjournment in the light of late prosecution disclosure of relevant evidence germane to the original 1st December 2011 conviction, upon which the Restraining Order relied.

7. Further evidence to support, unavailable in the time frame available, was the 'contemporaneous note' made by the Appellant's solicitor of his client's memory of events on the 1st December 2011, on 22nd December2011, just two days before the Appellant's arrest and subsequent incarceration.

8. HM Cardiff prison's governors denied the Appellant proper client/solicitor/witness access, his access to his own funds for the defence or provide proper service of his letters/faxes/e-mails and telephone calls, to and from his solicitor, helpers or proposed witnesses controlled by MAPPA.

9. An issue had therefore arisen in the case as to what documents were allegedly served on the Appellant relating to the Restraining Order and as to whether one had been served as handwritten by District Judge Charles as there had been evidence adduced before the jury by way of unsworn submissions by Mr. Evans and by sworn evidence from those in the public gallery, that the former had handed up a draft of the proposed Restraining Order to District Charles for approval and that District Charles had written comments on it in order stating he withed to make the Restraining Order stronger (change to a Section 4 Order, '*fear of violence'*).

10. There was a "real possibility" of actual and/or perceived bias as a result of Mr. Evans prosecuting the case, when he had made oral submissions to His Honour Judge Curran

which were in effect the giving of evidence which was unsworn and in respect of which the Appellant was unable to challenge by way of cross-examine.

11. In fact the Appellant had been absent in the cells at Cardiff Magistrates' Court when the issue of the 'Restraining Order' had been discussed by Mr. Evans with District Judge Charles on 1st December 2011.

12. In addition, the relevant exchanges between Mr. Evans as prosecutor and His Honour Judge Curran were heard in the presence of the jury when they should have been ordered to retire, causing prejudice and bias in the Appellant's case.

13 The jury specifically asked for sight of the original, not copy, of both the GEOamey Custodial Services custody and clerk of the court's log and contemporaneous notes of evidence but the judge indicated, in the absence of the Appellant, that they were not relevant.

14 The Appellant therefore had an unfair trial and/or the said trial took place in breach of article 6(1) of the ECHR as incorporated by schedule 1 of the Human Rights Act 1998.

LACK OF DISCLOSURE IN RESPECT OF THE APPELLANT

1. The prosecution failed to supply to the Appellant the complete log with handwritten notes and annotations of the custody records and cctv footage, kept by GEOamey Custodial Services, that had been in charge of security in the cells at Cardiff Magistrates' Court and also the notes made by Mr. Michael Williams, the Clerk of the Court and others at Cardiff Magistrates' Court.

2. Further, it emerged on 3 May 2012, during the trial that Mr. Evans was appearing in for the prosecution, he had handed up a draft of the 'Restraining Order' to District Judge Charles on 1st December 2011 and the learned District Judge had made handwritten additions to it with suggestions for making it stronger to be one under Section 4 of the Act.

3. There was an issue in the trial as to exactly which version of the 'Restraining Order' had actually been served on the Appellant in the cells by the Security Officer Mr. Leigh Barker and so the existence of the copy of the 'Restraining Order' with the handwritten additions made by District Judge Charles became an issue as the Appellant wished the jury to see it.

4. At the conclusion of the proceedings, on 3 May 2012, His Honour Judge Curran enquired as to the whereabouts of the version of the Restraining Order with the handwritten additional made by District Judge Charles and was told by Mr. Evans that it was at the CPS Headquarters in the Appellant's case file at Merthyr Tydfil.

5. Although His Honour Judge Curran directed that it be produced at the resumption of the proceedings, on 4 May 2012, only a computer print out of the amended restraining Order was produced and the jury was deprived of seeing either the original version with the handwritten additions, made by District Judge Charles or a certified true copy of the original 1st December 2011 Restraining Order made on some date between 1st and 9th December 2011.

6. The Appellant had also again sought disclosure of the notes made by Mr. Michael Williams, the Clerk of the Court at Cardiff Magistrates' Court at the commencement of the proceedings, on 4 May 2012 but no order or any determination was made by His Honour Judge Curran for their production, instead, in the absence of the Appellant, informing the jury they, along with the prison and GEOmey Custodial Services records were not relevant.

7. Prior to trial His Honour knew the Appellant had received correspondence from Cardiff Magistrates stating he was not entitled to any court record other than the certificate of conviction for this and some currently seven ongoing summary cases, different but all related to this current appeal.

8. The Appellant therefore had an unfair trial and/or the said trial took place in breach of article 6(1) of the ECHR as incorporated by schedule 1 of the Human Rights Act 1998.

CASE SHOULD HAVE BEEN WITHDRAWN FROM CONSIDERATION BY THE JURY

1. Although the Appellant didn't make any submissions of 'no case to answer', after the close of the prosecution's case, His Honour Judge Curran should have withdrawn the case from the jury on the grounds that the evidence as it then stood, relating to the alleged service of the Restraining Order on the Appellant in the cell number three of Cardiff Magistrates' Court, on 1st December 2011, was so unreliable that no jury properly directed could convict on that evidence.

2. Conflicting evidence had been given between the Clerk of the Court, Mr. Michael Williams and the Security Officer, Mr. Lee Barker as to whether the Appellant had been serviced in one of the cells or in the corridor of the cell area below the Magistrates, whether he had been served with one or two separate documents, if at all and when put alongside their original but conflicting police witness statements, it is the Appellant's submission, that for this case to have even reached a jury was an abuse of process fueled by vengeance.

3. In addition, Mr. Barker had given evidence that he had read "Restraining Order" at the top of the document, that he had stated in evidence he had given to the Appellant but didn't give any evidence that the Appellant's name was on the document or that he had read the Appellant's name on the document in question.

4. There was a serious risk of doubt regarding the alleged service of the 'Restraining Order' on the Appellant in the cell area of Cardiff Magistrates' Court by Mr. Barker on the Appellant.

5. In the premises, the Appellant's conviction is thereby rendered "unsafe" under section 2(1)(a) of the Criminal Appeal Act 1968.

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