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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **22/10/10**

IN THE CROWN COURT IN NORTHERN IRELAND

R –v- JONATHAN BOWE
LIAM DUFFIN
ELIZABETH MARGARET McCLURE

ICOS NO: 09/144093
CROWN APPLICATION FOR ANONYMITY ORDERS PURSUANT TO SECTION 88 OF THE CORONER'S AND JUSTICE ACT 2009

His Honour Judge Miller QC

[1] The prosecution has applied for Witness Anonymity Orders under the Coroner's and Justice Act 2009 (the 2009 Act) for under-cover police officers referred to as 0246, 0345, 0355, 0356 and 0357 who it wishes to call as witnesses upon the trial of the defendants, who are charged, inter alia with the offence of possession of a firearm in suspicion circumstances on 22 May 2009 in the Cregagh area of Belfast.

[2] The applications are:

(i) That the witnesses names and other identifying details be withheld pursuant to Section 86(2)(a)(i) of the Act;

(ii) That the witnesses names and other identifying details be removed from materials disclosed to any party to the proceedings pursuant to Section 86(2)(a)(ii) of the Act;

(iii) That the witnesses be permitted to use their respective pseudonyms throughout all proceedings pursuant to Section 86(2)(b) of the Act;

(iv) That the witnesses are not asked questions of any specified description that might lead to the identification of the witnesses pursuant to Section 86(2)(c) of the Act;

(v) That the witnesses be screened from all persons present in the courtroom with the exception of the judge, the legal representatives of the prosecution and defence and Court Service Personnel pursuant to Section 86(2)(d) of the Act.

[3] The applications are based upon evidence provided by D/C/Inspector John Kelso, an officer attached to the Crown Operations Department, Belfast and also D/Sergeant Stephen Strain, a sergeant attached to the Organised Crime Branch, Belfast. In addition

the prosecution rely upon a number of statements made by the five officers in which they refer to their wish to have their identities concealed.

[4] These applications are opposed by and on behalf of the defendants Bowe represented by Mr John Kearney of Counsel and Duffin represented by Mr John McCrudden QC (with Mr Declan Quinn of Counsel) and I have had the benefit of extensive, written and oral submissions from counsel for each defendant and also on behalf of the prosecution represented by Mr David McDowell of counsel. It may be taken that whilst I shall not refer to all of the details of the submissions made I have taken them into account.

[5] Before considering the various issues that arise in this case it is necessary first of all to set out the evidence which it is proposed the officers give together with the other key elements of the Crown case in order that the applications can be placed in their proper context.

[a] On 22 May 2009 at 4.30 pm a male and female were seen leaving 15 Grove Street East and getting into a black Ssangyong Jeep, VRN GIG 8091. The female was driving the vehicle and the male was wearing a green tee shirt and the vehicle drove off and headed in the direction of Beersbridge Road. (0357 page 93).

[b] At 5.02 pm the Jeep stopped outside 25 Jocelyn Street, at the home of David Adams. He was observed coming out of his house and looking into the back seat of the Jeep. At 5.04 pm the Jeep drove off eventually turning onto the Cregagh Road and travelling country-wards. (0356 page 94).

[c] At 5.16 pm a blue Renault Scenic containing at least three people was stopped at North Bank facing Shimna Close. The black Ssangyong Jeep was right behind this vehicle and facing in the same direction. A person bearing the description of the defendant Bowe appeared to be talking to the occupants of this Scenic car. (0345 page 95).

[d] At 5.24 pm a grey Renault Scenic taxi was seen travelling towards the Bellsbridge Roundabout from the Citywards direction. The front passenger was a male of medium build with dark hair and wearing a grey fleece with a white tee shirt underneath. (0246 page 97).

[e] At 5.25 pm the grey Scenic taxi still carrying this passenger was seen travelling along Mount Merrion Avenue in the direction of North Bank. (0345 page 95).

[f] At 5.26 pm a male wearing a grey fleece carrying a red holdall over his shoulder was seen to meet up with "a possible for Jonathan Bowe" in North Bank in the middle of the road beside the Jeep and the blue Scenic car. (0345 page 95).

[g] At 5.27 pm the blue Renault Scenic containing at least three persons was observed driving towards the City on the Cregagh Road heading towards the Bellsbridge Roundabout. It was travelling at high speed and was partially mounted on the footpath. As it approached the roundabout a red holdall was thrown from the vehicle. It then continued on the Cregagh Road and turned left into Dromore Street where it stopped at the junction with Willowholme Drive and two of the occupants got out. One who was wearing a red bomber jacket and carrying two plastic bags, (one green and one white) went down an alleyway while the other got back into the Scenic which then continued on towards Willowholme Drive. (0355 page 96).

[h] At 5.31 pm the Jeep was observed parked in North Bank. A male wearing a grey hoodie came out of Shimna Close and got into the front passenger seat. The Jeep drove off making its way into Mount Merrion Road where it was stopped by police at the Bellsbridge Roundabout. (0356 page 94).

[i] The defendant McClure was the driver of the Jeep whilst the defendant Bowe was in the front passenger seat and the co-accused Adams was in the rear. Each was arrested and had their mobile phones seized. (Constable Moore pages 1-2).

[j] The defendant Bowe said that he had been visiting a Christopher Jordan of 18 North Bank in the Cregagh Estate. He was then observed attempting to pass £440 in cash to McClure. (Constable Callaghan pages 6-7). While the police were dealing with him Bowe was repeatedly asked to put his phone down. (D/C Skelly page 70 and additional evidence). The prosecution suggest that he was at that stage deleting information from his phone.

[k] The red holdall was recovered from where it had landed on the Cregagh Road and in it was a shortened shotgun and five cartridges of compatible ammunition. (Coulter pages 21-22; Rossi pages 83-84 and A.E.). This gun had been stolen from a house in Greyabbey, Co Down in March 2008. (Statement of Martin pages 87-89).

[l] The Blue Renault Scenic was abandoned in an alleyway at the bottom of Reid Street. Its doors were open and its engine running. (Constable Callaghan pages 6-7). Shortly afterwards two males were seen running out of Chesham Gardens and across Ardenlee Gardens. Constable Dallas shouted for them to stop and they immediately lay on the

ground and were arrested. One of them, Angelo Johnston, was wearing a black fleece jacket just as observed by Constable Dallas in relation to the rear seat passenger of the blue Renault Scenic. Duffin was wearing a grey fleece jacket. Both had cuts to their hands and were bleeding. Duffin stated that he had been "out for a walk". He was given a warning to account for his presence at North Bank and replied "I don't know, what firearm? I have no firearm on me." (Constable Cullen pages 8-10; Dallas pages 3-4).

[m] Adams's DNA was found on the handle of the red holdall and a pair of jeans which were located within it. (Quinn page 86).

[n] Blood from both Duffin and Johnston was found along the route they had taken from the Renault Scenic to the point of their detection. (Quinn A.E.). DNA from the front nearside door handle of the blue Renault Scenic yielded a mixed profile that could not be resolved. That said the DNA from Liam Duffin could not be eliminated from the mixture.

[6] The defendant David Adams has pleaded guilty to all the charges on the bill of indictment as has the co-accused Angelo Johnston. In this regard the following facts can be accepted as established:-

(i.) That Adams travelled by taxi from his home in Jocelyn Street to a point at the North Bank where he exited the taxi and put a holdall into the back of the blue Renault Scenic. Adams then got into the rear of the black Ssangyong Jeep. The blue Renault Scenic then moved off into the Cregagh Road and was at that stage pursued by police vehicles. At this point the holdall was thrown from the vehicle landing in the middle of the Cregagh Road. The Renault Scenic then made its way through the Bellsbridge Roundabout further along the Cregagh Road before turning off in Dromore Street and then up Willowholme Drive. At some point the vehicle stopped and two persons alighted from it, one unknown made off in the general direction of the Cregagh Road, the other got back into the vehicle which travelled a short distance to an alleyway somewhere off Reid Street. Two persons then got out of the vehicle leaving the doors open and the engine running and these persons then tried to make their escape by climbing over various garden walls behind Earl Haig Park. Two persons were then detained in or around Chesham Gardens. These were the defendants Johnston and Duffin.

(ii) Meanwhile the black Ssangyong Jeep had made its way from the North Bank along Burren Walk and onto the Cregagh Road through the Bellsbridge Roundabout where it too was stopped by police. The defendant McClure was found to be the driver of this vehicle with the defendant Bowe as front seat passenger and the defendant Adams in the rear of the vehicle.

[7] There is additionally evidence in the form of analysis of mobile phone traffic between the various defendants which provides the link in particular between Bowe and Adams and Bowe and Johnston. This establishes in particular that at 4.32 pm on 22 May 2009 a texted message emanating from a phone attributable to Bowe was sent to a phone attributed to Adams. This message stated as follows: - "Good man on way".

[8] Five minutes later at 4.37 pm a call was placed from Bowe's mobile phone to one attributable to Johnston and further calls were placed from Bowe to Adams at 4.59 pm, 5.14pm and 5.20 pm. These calls and texts fit in with the time line set out in the summary of the undercover officers evidence referred to above.

[9] When interviewed by police Bowe admitted that he had been in telephone contact with Adams and had then been driven by McClure to Adam's house at Jocelyn Street at or about 5.00 pm.

[10] When he arrived at Jocelyn Street Bowe stated that he spoke to David Adams who came out to the front door of his property. Bowe would not say what their conversation was about but he and McClure then drove to North Bank to see his friend Christopher Jordan. Whilst at North Bank he was approached by a number of persons who were in a car and while still talking to these people Adams appeared. Again no explanation was provided as to how or why Adams did this but the upshot was that McClure and Bowe then gave him a lift to the Ranger's Club. It was whilst on route to the Club that police stopped the Jeep.

[11] In his interview Duffin eventually admitted to being with an unnamed person who had purchased the blue Renault Scenic car in Portadown a matter of days before the incident on 22 May 2009. He further stated that whilst walking down the Falls Road on the 22nd he was flagged down by this person in the blue Renault Scenic and got into the vehicle. His journey took him initially to Jury's Hotel and then thereafter to East Belfast. He purported not to remember or to recognise the various streets where witnesses say the Scenic was observed. Nor did he remember any person talking into the Renault when it stopped or to observing any person get into the back of the Renault with or without a holdall. He did admit, however that police then gave chase to the Renault which made off at high speed and eventually came to a halt and that he, in common with others within the vehicle, got out and was eventually detained.

[12] This is then in short form the basic factual matrix against which the present application must be considered.

[13] The first witness called in support of the application was D/C/Inspector Kelso of the Crime Operations Department, C4A branch. This officer is second in command of the PSNI Surveillance Unit. The D/C/Inspector acknowledged that it was important that the officers give their evidence and underlined that they wished to do so but insisted that if protection in the form of the measures sought was not granted that he would have to give grave consideration as to whether he would permit them to give evidence in court. He continued that there was a real and genuine concern for all officers in Northern Ireland especially given the increased security risk to which reference has been made by both the Chief Constable and the security services including the Head of MI5.

[14] The witness continued by observing that Surveillance officers by their very nature often work in hostile areas and in close association with the subject of the surveillance and frequently are placed in very vulnerable situations. Over the last 30 years officers of the Unit and its predecessor have been involved in National Security operations and investigation of Serious Crime. Therefore the persons subject of such surveillance are represented in some of the most dangerous and violent criminals in society.

[15] D/C/Inspector Kelso emphasised that the officers and each of them involved in this case have genuine concerns and that anonymity in terms was their only defence. This would allow them confidence and also their colleagues and to an extent their families. Without such protection it was the D/C/Inspector's view that he could not use the officers again in their current role and that this would have a serious detrimental effect upon surveillance capacity and ultimately would be contrary to the public interest.

[16] The D/C/Inspector refused to give any details as to the numbers involved in surveillance operations but he did indicate that as a result of the Patton Reforms the Unit was due to lose some 20% of its officers and one particular team has been so seriously under resourced over the last twelve months that he has had to supplement it on an ongoing basis. The process of training takes some two years from start to completion and of perhaps 100 applications maybe six or seven might actually complete the course. Costs of this training are estimated to be in the region of £100,000 or more per operative.

[17] Returning to the five individual officers involved in this case D/C/Inspector Kelso indicated that he knew each well that each was a serving police officer and that none was nearing retirement. Each had expressed a concern for their own welfare and regarded anonymity as being something which was to the forefront of their minds and something about which he had sought to give each reassurance.

[18] Cross-examination by both Mr Kearney and Mr McCrudden QC focused on the twin stated grounds for making the application namely the safety of the individual officers and the efficacy of continued surveillance operations. D/C/I Kelso accepted that none of the officers concerned in the present application and indeed no officer involved in surveillance over the period that he had been associated, namely six years, had ever been the subject of harm or threat of harm through previous surveillance work.

[19] It appears that the decision that an application for anonymity would be made in each and every case where surveillance officers were scheduled to give evidence appears to have been taken in or around 18 November 2008. This was a direct response to the coming into force of the Criminal Evidence (Witness Anonymity) Act 2008, the precursor to the Coroners and Justice Act 2009.

[20] An application had been made in November 2008 in the case of ***R –v- Deehan & Ors*** and during argument in relation to that matter it came to light that two officers had previously given evidence in the case of ***R –v- Mackle & Ors*** when only partially screened. It is significant that those officers are also two of the five officers involved in the present application. Both Mr Kearney and later Mr McCrudden QC closely cross questioned the D/C/Inspector as to why these officers having previously been exposed in the Mackle case where deployed in the surveillance operation leading to the detection of the present defendants. It was argued that the concerns with regard to both their safety and indeed to their efficacy in the field had been overstated by the D/C/Inspector.

[21] Mr McCrudden focused on the question as to the extent to which alternative means of protecting the identity of officers had been considered by the police. He referred to the use by surveillance officers of some form of disguise. He also asked about the deployment of officers in other areas of the United Kingdom or indeed of Northern Ireland. Where this approach to be utilised, he argued, the officers could then be deployed back into areas where they had previously undertaken surveillance work with the security of knowing that what might be described as the "fade factor" could have taken effect. D/C/Inspector Kelso emphasised however that Northern Ireland is a very small jurisdiction and that his concerns were that with limited resources both financial and more importantly human his job was to look after the officers and maintain their capability as an operational unit. He emphasised that a surveillance deployment can start and end anywhere and to try to risk assess where a surveillance officer can and cannot go is not practical in such a small jurisdiction.

[22] In terms however the central criticism voiced by counsel for both defendants was that a policy decision had been made and that little or no effort had been taken to ascertain the real level of risk to individual officers in

any given situation. Neither of the two officers who gave evidence partially screened in the Mackle case thereafter expressed concerns to D/C/Inspector Kelso about their continued use as surveillance officers or their deployment in the present operation. Even though in the Mackle case surveillance was concentrated in West Belfast and the present operation was located in East Belfast at least one of the defendants in the present case (Duffin) came from West Belfast and no individual risk assessment appears to have taken place with regard to the propriety of using one of the witnesses from the Mackle case in this surveillance matter.

[23] Another matter of concern raised by and on behalf of the defendants was explored in the cross-examination of D/Sergeant Stephen Strain. This officer had received the individual statements of the five undercover officers on 17th and 19th February 2010 and recorded in his own statement made on 19 February 2010 his note of their reported concerns. It is apparent that the statement of each of the undercover officers is identical in all respects, including the font and type-face, with the only difference being the years of service each officer had completed. As Mr McCrudden argued one is left with the clearest impression that each has simply filled in a blank section in what is otherwise a standard pro forma document. D/Sgt Strain admitted that he had received an email from the senior Investigating Officer, D/C/I Ennis, which set out the matters to be addressed with the officers. The D/Sgt produced this email to the Court and it is apparent that it is nothing more nor less than a template or pro-forma, which was recorded verbatim by each of the five officers.

[24] In such circumstances it is argued that the court when reaching a determination as to whether to grant a Witness Anonymity application can place little or no reliance upon a purported assertion of fear in such a document.

[25] D/Sergeant Strain, however, emphasised that he had spoken directly to each of the five officers in question. He indicated that he knew each personally and confirmed that each had expressed fear of the consequences of giving evidence other than in anonymised form to him. Having said that he was unable to point to any specific matter, which he could claim was related to him by any of the officers in question. In terms he could add nothing to what was in their statements.

THE STATUTORY PROVISIONS

[26] The present application is brought under the provisions of Sections 86-90 of the 2009 Act. This, as has previously been stated superseded the 2008 Criminal Justice (Witness Anonymity) Act 2008 with effect from 1st January 2010. The statute has, in the relevant sections, made express provision for derogation from the standard manner in which witnesses should give

evidence in court. Thus if the stipulated conditions are met Parliament has decreed that witness anonymity is permitted. It is clear, however, that the test sets a very high threshold and that each case is fact specific.

[27] The 2008 Act was considered most authoritatively in the leading case of **R v Mayers and others [2009] 2 All ER 145** in which Lord Judge CJ presiding over a five judge court provides a helpful and authoritative exposition of the provisions of the Act and the manner in which they should be interpreted and applied. These principles of interpretation apply in equal manner to the provisions of the 2009 Act.

[28] The following principles applicable to the circumstances of the present case can be extracted from Mayers. Lord Judge deals with the problems that arise in the case of police and comparable witnesses whose identity has been concealed from the defendant, particularly witnesses working under cover.

(i) An Anonymity Order should be regarded as a Special Measure of last practicable resort.

(ii) The fact that a witness might prefer not to testify or would be reluctant or unhappy at the prospect is not enough. It must be clear that the witness will not testify.

(iii) So far as disclosure is concerned, it must be complete and the prosecution must be proactive in considering disclosure focusing closely on the credibility of the anonymous witness and the interests of justice; and the defence statement provides the benchmark against which the disclosure process must be examined.

(iv) Conditions (A) (B) and (C) must all be met before a Witness Anonymity Order can be made.

(v) "Necessary" in conditions (A) (B) and (C) requires the court to be satisfied to the highest standard. Even if an Order is "necessary" it cannot be made unless the court is satisfied that the trial will be fair.

(vi) Whether the evidence of the anonymous witnesses may be the sole or decisive evidence incriminating the defendant must be taken into account when deciding whether conditions (A)-(C) are satisfied. If it is, that is not conclusive whether those conditions are met. Nevertheless, it directly impinges on whether condition (B) may be met.

(vii) There are often sound operational reasons for maintaining the anonymity of undercover witnesses, ***and the court would normally be entitled to follow the unequivocal assertion by an undercover witness that without an anonymity order he would not be prepared to testify*** (my emphasis).

(viii) For the true identities of undercover witnesses to be revealed, or for them to be exposed to a defendant, or his

colleagues or to anyone else in court, would often create a real risk to their own safety, and that of their colleagues. In any event their potential for future use in similar operations would be reduced, if not extinguished, something which is itself harmful to the public interest.

(ix) Although the credibility of a security operation may be challenged, it will be unusual for a defendant to be disadvantaged by ignorance of the true identity of the witness. Whether their integrity or their accuracy is an issue, full cross-examination can proceed on the basis that any manner of criticism can be directed to the witnesses using the name or names which they have assumed.

[29] I now turn to consider each of the three statutory conditions, A, B & C and the considerations regulating the manner in which they should be interpreted set out in **Sections 88 & 89 of the 2009 Act.**

[30] Section 89 enjoins the court when considering each condition in addition to any other matter it considers to be relevant, that it must have regard to the following matters: -

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—
(i) has a tendency to be dishonest, or
(ii) has any motive to be dishonest in the circumstances of the case,
having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

[31] Before turning to examine each of the three conditions individually I should indicate that I am satisfied that the cumulative effect of the evidence of

the five undercover officers though significant is neither the sole nor decisive evidence against any of the defendants. As appears from the summary of the key features set out above at **Paragraph 5**, the case against each is circumstantial and based on a number of interlocking strands. None of the undercover officers purports to positively identify any of the defendants and in essence their evidence relates to the movement of various vehicles in a specified timeline, which, when taken in association with other evidence provides one of those strands. I do not accept, however, nor was it argued by the Crown, that without this evidence there would be no case against any one of the accused. I bear this in mind in relation to consideration **(c)** at **Section 89 (2).** It is axiomatic that I also keep to the forefront of my deliberations the central tenet enshrined in **Section 89 (2) (a)** that a defendant is entitled to know the identity of witnesses called to give evidence against him.

[32] I am equally satisfied that given the nature of the evidence, coupled with the Crown's ongoing statutory commitment to actively address the issue of disclosure, the prospect of these witnesses giving their evidence anonymously does not impact on the ability of each defendant to properly test the evidence of any of the witnesses whether on grounds of credibility or otherwise. **[S.89(2)(d)].** For the same reason and notwithstanding the arguments advanced, in particular by Mr McCrudden, I do not consider that on the evidence as it emerged in the application hearing there is any reason to believe that any of the witnesses has a tendency to be dishonest or has any motive to be dishonest in the circumstances of the case. [**S.89(2)(e)]**. Similarly in the context of the evidence each witness purports to give I have no reason to believe that the credibility of each individual officer is a matter of great relevance bearing in mind how that evidence in no way contradicts the case made by the defendant Bowe in either his interview or in his Defence Statement. So far as Duffin is concerned he has yet to file a Defence Statement but again there is no contradiction with the case he made to police during interview as to his movements during the relevant time. **[S.89 (2) (b)]** Finally although enjoined to bear in mind the possible use of measures alternative to anonymity in order to protect the witnesses **[S.89 (2) (f)]** I bear in mind that in this case D/C/I Kelso was unequivocal in asserting that without the measures sought being granted the witnesses would not give evidence.

[33] In **Mayers** and in ***R –v- Powar [2009] EWCA Crim 594*** it was

suggested that it is perhaps more logical to consider condition **(C)** first,

and that is the course I intend to follow. So far as is relevant **Section**

88(5) states as follows:-

"Condition (C) is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and –

(a)The witness would not testify if the proposed Order were not made, or
(b)There would be real harm to the public interest if the witness were to testify without the proposed Order being made.

[34] Although I am satisfied that the testimony of the witnesses is significant for the reasons previously given a question remains as to whether its' importance is such that in the interests of justice they should testify. This brings me to what I consider to be the crux of this case as it has been presented. In approaching the alternative considerations at **S. 88 (5) (a) & (b)** I cannot step back from the quality of the evidence placed before this court in support of the application.

[35] It has long been accepted by these courts that undercover officers, be they policemen or soldiers should have their identity concealed, because once their identity is revealed their future usefulness as such is gravely impaired and in all likelihood completely destroyed. (See the observations of **Hart J in R v McKenna, Toman & McConville [2009] NICC 44 at Paragraphs 57 & 58).** That said it cannot be the case that without more a witness anonymity application should be granted simply because the witness is an undercover police officer. The Crown must show to the requisite standard, namely beyond reasonable doubt, that there would be real harm to the public interest if the witness were to testify without the proposed order.

[36] My concern in this case is that on or about the 17th November 2008 the ACC on behalf of the Chief Constable of the PSNI adopted a policy decision that no undercover officer should be required to give evidence unless granted anonymity. That as a decision is both understandable and justifiable. It does not, however, remove the obligation upon the prosecution of establishing that such a measure in any given circumstance is ***"necessary."***

[37.] Although D/Ch/I Kelso stated that he knew each of the five officers and that each had expressed concerns for their safety, he did not expand on that in respect of detail relevant to each one. He further repeated the standard concerns relating to future efficacy. Notwithstanding, however, the fact that he was aware that two of these officers had given evidence in the Mackle case as previously described, he could provide no explanation as to why they had been deployed in this operation. Nor could he point to any way in which the efficacy of either had been detrimentally affected as a result of giving evidence in this way. In short no evidence was placed before me that directly impacted on the personal circumstances of any of the five officers and in particular, these two officers. Lest there be any doubt, however I wish to make it clear that I am specifically not saying that the fact that an undercover officer had previously given evidence other than anonymously means that he or she should not be entitled to such measures thereafter, the point is that as with every application the evidence placed before the court must be sufficient to satisfy the court that the order is necessary and justified.

[38.] Furthermore when coming to assess the requirement that I must be satisfied that the witness will not testify if the order were not made, I have real doubts on this aspect. The evidence to support this is that of D/Ch/I Kelso and D/Sgt. Strain backing up the statements of each officer. It is clear, however, that those statements were in essence provided to each officer who simply inserted their own period of service. D/Sgt. Strain told me that he had spoken to each officer individually and had noted their concerns for the safety of themselves, their colleagues and to an extent, their families. He was, however, unable to point to any detail of concern in respect of any officer. In short he could add nothing to what was contained in the pro-forma statements, which he had shown to the officers when he spoke to them.

[39.] On the facts of the case as presented to me and I emphasise that point because I wish to make it clear that each case must turn on its own facts and on the evidence presented, I can place no reliance on the pro-forma statements submitted by O 246, O 345, O355, O356 & O357. This in turn impacts upon the supporting evidence of both D/Ch/I Kelso and D/Sgt Strain. That evidence does not meet the test set out in **S. 88 (5).** I wish to make it clear, however, that I do not regard either officer as anything other than professional, direct and honest in the manner in which they gave their respective evidence before me. My concern is that the adoption of the policy and the drafting of the pro-forma template led the police to derogate, (in this case at least) from their responsibility to provide detailed evidence in support of this application. The fact that the same statement was used in precisely the same way by each officer leads me to the conclusion that I could not distinguish between each so as to treat O 355 & O357 differently from the other officers.

[40.] For these stated reasons I hold that Condition C is not made out on the facts as presented before me. This in effect means that the application must fail as the Crown must establish all three conditions. For the sake of completeness my findings regarding Condition A would be the same and for the same reasons. Condition B gives rise to separate concerns but suffice to say that if the evidence had been presented with regard to Conditions A & C in a manner, which permitted me to hold that those conditions had been satisfied, I would have had little doubt but that the granting of the applications would be consistent with the defendant's right to a fair trial.

[41.] As the Crown through their witness D/Ch/I Kelso has indicated that nothing less than the grant of the full order would suffice I do not consider, pursuant to **S. 89 (2) (f)** that any lesser measure would be reasonably practicable to protect the witness.