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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

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THE QUEEN

v

IHAB SHOUKRI, SAMUEL TODD ROBINSON, GARY McKENZIE, GEORGE McHENRY, ALAN JOHN McCLEAN, JOHN DAVIS

Icos No 07/006598

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HART J

[1] Applications have been brought by several of the defendants for the order of No Bill under the provisions of section 2(3) of the Grand Jury (Abolition) Act (NI) 1969 (the 1969 Act), but before dealing with the substantive applications I must first of all refer to a preliminary objection made by Mr John McCrudden QC (who appears on behalf of the accused Robinson with Mr Taylor Campbell) that it was not open to the prosecution to amend a count or present a substituted bill prior to the No Bill application. I ruled against him and gave brief reasons and said that I would give my reasons in writing which I now do.

[2] The defendant Robinson was originally charged on count 5 with the offence of support of a prescribed organisation, contrary to section 12(2)(a) of the Terrorism Act 2000 (the Terrorism Act), the particulars of offence alleging that he, on 2 March 2006

> …in the County Court Division of Belfast, assisted in arranging or managing a proscribed organisation, namely the Ulster Defence Association.

[3] By letter to the defendants' solicitors dated 16 March 2007 the PPS conceded that this wording, as well as that of counts 3, 7, 10 and 11, which

were in the same terms, was defective, and a fresh indictment containing amended counts 3, 5, 7, 10 and 11 was sent to the defendants. Mr McCrudden argued that it was not open to the prosecution to serve a new indictment and/or to amend an indictment at the No Bill application stage. His argument was that it is not possible to amend or substitute a new count for a count which is a nullity, and that any power which the court had to amend an indictment was a power limited to the trial itself.

[4] Mr Kerr QC (who appears on behalf of the prosecution with Mrs Ivers) pointed to the provisions of section 5(1) of the Indictments Act (NI) 1945 which states:

> Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court may make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

[5] I was satisfied that the wording of section 5(1) was such that the court has power to permit an indictment, or a count in an indictment, to be amended prior to the No Bill stage, either by amendment of a particular count in an indictment or, if necessary, by the presentment of an entirely new bill containing an amended count or counts. The power in section 5(1) to "make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case" is expressly stated to be exercisable "before trial, or at any stage of a trial". I can see no reason why the prosecution should not be permitted to reformulate any charges laid against a defendant in an indictment prior to arraignment, and therefore prior to any application that may be made for a No Bill under section 2(3) of the 1969 Act, provided that the application can be granted without injustice. Rule 33 of the Crown Court Rules (NI) 1979 provides that:

> Subject to section 5 of the Indictments Act (Northern Ireland) 1945 no substituted or amended indictment shall be presented without prior leave of the court.

The court has to consider whether any proposed amendment, whether by way of a substituted or amended count or indictment, can be permitted without injustice to the defendant. Whatever may be the case at a later stage of the trial, it is hard to envisage circumstances in which it might be unjust to permit a case which must, of course be based upon the evidence contained in the committal papers, to be presented in whatever way is necessary to enable

the merits of the case made against the accused to be examined by the court. In the present case the defence were given ample notice of the proposed amendment, and Mr McCrudden did not suggest that the defence were in any way disadvantaged. I considered that the prosecution should be permitted to present a fresh indictment containing amended counts, including count 5 which related to the defendant Robinson, and so ordered.

[6] Part of the prosecution case against the defendant Robinson, and against his co-accused Shoukri, McKenzie and McHenry, is the evidence of Detective Chief Superintendent Wright contained within the committal papers. In his statement made for the purposes of committal proceedings he expresses the opinion "that each of the four named persons in this statement are members of the Ulster Defence Association", and as the witness statement makes clear the opinion is given for the purposes of section 108 of the Terrorism Act. Two issues relating to s. 108 arose in the present case. The first is whether the court is entitled at this stage to take into account the evidence of Detective Chief Superintendent Wright when he did not give oral evidence at the committal proceedings. The second is whether the provisions of section 108 apply for the purposes of the 1969 Act.

[7] Those defendants charged with membership of the UDA are charged with offences under section 11 of the Terrorism Act and therefore section 108 applies. Section 108(2) is in the following terms.

> (2) Subsection (3) applies where a police officer of at least the rank of superintendent states in oral evidence that in his opinion the accused –
>
> (a) belongs to an organisation which is specified, or
>
> (b) belonged to an organisation at the time when it was specified.
>
> (3) Where this subsection applies –
>
> (a) the statement shall be admissible as evidence of the matter stated, but
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> (b) the accused shall not be committed for trial, be found to have a case to answer or be convicted solely on the basis of the statement.

(Emphasis added).

[8] Section 108, as did its predecessor section 30A(2) and (3) of the Northern Ireland (Emergency Provisions) Act 1996, provides for the admission of opinion evidence in certain circumstances. Section 30A was inserted into the Northern Ireland (Emergency Provisions) Act 1996 by section 2 of the Criminal Justice (Terrorism and Conspiracy) 1998. This introduced into the domestic law of the United Kingdom a novel concept, namely that evidence of opinion of a police officer could be admissible in order to prove the crime of membership of what is now described as a specified organisation. As is pointed out in *Murphy on Evidence*, 9th Edition, at page 339:

> The general rule of common law was that the opinions, beliefs and inferences of a witness were inadmissible to prove the truth of the matters believed or inferred if such matters were in issue or relevant to facts in issue in the case. Apart from the question of the relevance and reliability of opinion evidence, it was held that such evidence usurped the function of the court to form an opinion on the facts in issue on the basis of the facts proved by the evidence placed before it.
> ...
>
> The common law rule that opinion evidence is inadmissible to prove the truth of the matter believed is subject to three important exceptions, but otherwise remains in full effect. The exceptions are:
>
> (a) General reputation is admissible to prove the good or bad character of a person; pedigree or the existence of a marriage; and certain matters of public concern, which would otherwise be impossible or very difficult to prove.
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> (b) Expert opinion is admissible to prove matters of specialised knowledge, on which the court would be unable properly to reach a conclusion unaided.
>
> (c) Non-expert evidence may be received on matters within the competence and experience of lay persons generally.

[9] It is a striking aspect of section 108(2) that it provides that subsection 3 applies where a person of at least the rank of superintendent "states in oral

evidence that in his opinion the accused" belongs to a specified organisation. Why is it that in order to be admissible the opinion has to be given "in oral evidence"? I believe that there are two reasons why Parliament took this course. The first is that making opinion evidence of this sort admissible was a major change in the criminal law of the United Kingdom. It would have been open to Parliament to provide that the evidence was admissible; that it was evidence of the matter stated; that other evidence was required, but not to require the evidence to be given in oral form. Parliament has chosen not to take that route and has expressly provided that in order to be admissible it must be given in oral form. The second is that otherwise section 108(2) and its predecessor may be held to be incompatible with the provisions of Article 6(3)(d) of the European Convention on Human Rights which has been incorporated into the domestic law of the United Kingdom by the Human Rights Act 1998. Article 6(3)(d) of the ECHR provides that:

> Everyone charged with a criminal offence has the following minimum rights:
>
> > (d) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

As Lord Phillips CJ pointed out in R v Xhabri [2006] 1 Cr. App. R. at p. 425:

> Article 6(3)(d) does not give a defendant an absolute right to examine every witness whose testimony is adduced against him. The touchtone is whether fairness of the trial requires this.

Nevertheless, were it the case that a person could, as in the present instance, be sent for trial on the basis of a witness statement which had not been tested because the witness had not been called, then there would be a possibility that this would be held to be incompatible with Article 6(3)(d) of the Convention.

[10] The wording of section 108(2) expressly requires the police officer concerned to give oral evidence of his opinion before the court can treat it as admissible. Section 108(3)(b) provides that, inter alia, "the accused shall not be committed for trial" … "solely on the basis of the statement", the "statement" being the oral evidence of the witness. Mr Kerr QC on behalf of the prosecution argued that section 108(2) does not require the witness to be called at the committal proceedings, but I consider that that is not the case. In Northern Ireland, even where the committal proceedings take the form of a preliminary inquiry where the witness statements are served upon the defence in written form, under article 34(2) of the Magistrates' Courts Order (NI) 1981 (the 1981 Order) the Court, the prosecution and the defence may

each require the witness to attend. Whilst the defence do not appear to have required Mr Wright to attend at the committal proceedings in this case, nevertheless the prosecution did not do so either, and therefore the evidence before the Resident Magistrate was not given in oral form. It therefore did not comply with s. 108(2) and in my opinion was inadmissible. Had Mr Wright been called as a witness in accordance with s. 108(2) then it would have been recorded in the form of a deposition and, in accordance with section 2(3) of the 1969 Act, would properly be before the Crown Court upon a No Bill application.

[11] It may be argued that the defence could have required the witness to attend but they did not do so, and so the statement is admissible. If, as I believe to be the case, it is a condition precedent to the admissibility of this evidence that the evidence be given in oral form, then the evidence is inadmissible because that condition was not complied with, and the prosecution are not relieved of their obligation to produce the witness so that he may be subject to cross-examination if they wished. I do not consider that this is a mere formality. On the contrary, Parliament has deliberately given an additional safeguard to a defendant faced with the prospect of being sent for trial in reliance in part upon the opinion of a police officer that the defendant has committed the crime alleged by requiring the witness to be produced by the prosecution to give oral evidence so the defence may have the option, if it wishes, of testing the basis upon which the opinion is expressed. That was not done in the present case and I am satisfied that the evidence is therefore inadmissible and has to be disregarded at this stage.

[12] I should record that Mr Kerr sought to call Mr Wright at this stage in the event that I ruled against him, but I declined to do so because I am satisfied that the court has no power to hear a witness at this stage. Section 2(3) of the 1969 Act confers upon the judge the power to order the entry of No Bill

> …if he is satisfied that the depositions or, as the case may be, the statements mentioned in subsection (2)(i), do not disclose a case sufficient to justify putting upon trial for an indictable offence the person against whom the indictment is presented.

The wording of the Act makes it clear beyond any doubt that the procedure requires the judge to determine the question of whether or not a No Bill should be granted solely upon the basis of the depositions, or the statements lodged where the indictment is presented with leave of a judge of the High Court, Court of Appeal or Crown Court, or by, or on the direction of, the Attorney-General. As Lord Lowry pointed out in R v Campbell [1985] NI at p. 363:

> In the past the Grand Jury had the duty after hearing at least one witness to either ignore the Bill presented before it by finding No Bill or to find a true bill and present an indictment.

The requirement that at least one witness should be examined before the Grand Jury before it could find a bill was introduced by s.1 of the Grand Jury (Ireland) Act, 1816, see Huband, *The Grand Jury in criminal cases*, p. 179. This provision was repealed by the 1969 Act, and thereafter the invariable practice has been to determine No Bill applications upon the committal papers only in accordance with the provisions of the 1969 Act.

[13] A further point in relation to s.108 is whether the court can have regard to a statement made at the committal proceedings for the purposes of the 1969 Act. As I have found that the statement of Mr Wright is inadmissible as it was not given by way of oral evidence at the committal proceedings the point does not now arise, and therefore any opinion I express on this point is obiter, but as it was raised it may be useful if I express my view upon it. S. 108 (3) (b) provides that where a statement is made by an officer of at least the rank of superintendent that in his opinion the accused belongs to a specified organisation

> …the accused shall not be committed for trial, be found to have a case to answer or be convicted solely upon the basis of the statement.

No reference is made to deciding whether a No Bill should be entered under the 1969 Act, and on the face of it there is therefore a lacuna in the legislation in that for the purposes of considering whether a No Bill should be entered it would be possible to decide that there was a sufficient case to put the accused on trial solely on the basis of an oral statement made at the committal proceedings and recorded in a deposition. When I raised this point with him, Mr Kerr submitted that the reference to "a case to answer" should be construed as including the process whereby the Crown Court decides if there is "a case sufficient to justify putting [the accused] on trial for an indictable offence" under s. 2(3) of the 1969 Act, although he recognised that this was to stretch the meaning of "a case to answer", a phrase usually, but by no means invariably, used when considering the case against the accused at the end of the prosecution case.

[14] I think this must be correct. Whilst s.108 (3) does not expressly refer to the procedures under the 1969 Act, the requirement in s. 2(3) of the 1969 Act that there is "a case sufficient to justify putting [the accused] on trial for an indictable offence" is the same test as applies in the Magistrates' Court where article 37(1) of the 1981 Order requires the court to be satisfied "that the evidence is sufficient to put the accused upon trial by jury for any indictable

offence". The only difference is that when the Crown Court considers whether to order a No Bill it must proceed on the basis that the trial must take place unless the court finds that there is not sufficient evidence to justify putting the accused on trial. See R v Adams [1978] 5 NIJB per Lowry LCJ. Whilst the accused has already been committed for trial to the Crown Court by the time that the Crown Court judge has to consider whether or not to enter a No Bill, nevertheless the test is the same at both stages. The same test is applied when the court comes to decide whether the accused has a case to answer at the end of the prosecution case, that is a case upon which the tribunal of fact could, not would, convict the accused, or, as it is often put, whether there is a *prima facie* case. Each of these stages is designed to ensure that the accused does not have to answer the charge against him unless there is sufficient evidence to justify his being put in peril of conviction. I therefore consider that when considering whether to enter a No Bill for the purpose of s.108 (3) (b) the Crown Court should regard itself as deciding whether there is a case for the accused to answer. The alternative construction would be to hold that in the absence of any reference in s. 108 to the 1969 Act Parliament had inadvertently deprived the accused of a protection that it expressly conferred upon him at every other stage of the pre-trial and trial process, namely that the prosecution could not rely solely on the statement of opinion of a police officer.

[15] I now propose to consider in turn whether there is a sufficient case to justify each of the accused being placed on trial upon the basis of the other evidence relied upon by the prosecution. The five defendants upon whose behalf applications for No Bill have been made face various charges under the provisions of the Terrorism Act. First of all, there are charges of membership by belonging to the UDA, contrary to Section 11(1). Secondly, they are charged with professing to belong to the UDA, again contrary to Section 11(1). Thirdly, Shoukri is charged with support for the UDA by assisting in arranging or managing a meeting on behalf of the UDA, contrary to Section 12(2)(a). Finally, McClean is charged with a single charge of support of the UDA, contrary to Section 12(2)(a) by assisting and arranging or managing a meeting on behalf of the UDA.

[16] It is common case that the principles to be applied are those to be derived from R v Adams and Re Macklin's application [1999] NI 106, principles which I summarised in R v McCartan and Skinner [2005] NICC 20.

(i) The trial ought to proceed unless the judge is satisfied that the evidence does not disclose a case sufficient to justify putting the accused on trial.

(ii) The evidence for the Crown must be taken at its best at this stage.

(iii) The court has to decide whether on the evidence adduced a reasonable jury properly directed could find the defendant guilty, and in doing so should apply the test formulated by Lord Parker CJ when considering applications for a direction set out in Practice Note [1962] 1 All ER 448.

[17] Before considering the evidence relied upon in support of the charges against each of the accused it is convenient to refer to certain facts that are common to each. Each defendant was on the premises of the Alexandra Bar in York Road, Belfast when the police raided the premises on the night of 2 March 2006. A large number of persons were found on the premises, some of whom were wearing what is alleged to be paramilitary style clothing. However, although eighteen males were arrested, it appears that only twelve are being prosecuted, six of whom are being proceeded against in the Crown Court and six, on the unchallenged assertion of the defence, in the Magistrates' Court. In a search of the building a number of latex gloves and balaclava hats were found on the stairs leading to the fire door, and these can be seen in a number of the photographs exhibited on the committal papers. Photograph 26 shows what is clearly a UDA flag or banner hanging on one the walls of the upstairs room of the bar. In addition there is evidence that it was intended to present a number of plaques bearing the UDA crest and the words "In Appreciation of Service" which had been ordered at a firm at Prestige Trophies and which were to be ready for 3 March. Various explanations were given by these defendants as to why they were present, but these are self serving statements.

The case against Shoukri

[18] As set out in the written submissions by the prosecution there are three remaining aspects of the evidence against Shoukri. The first is his presence on premises. The statement of Constable Mercer to be found at page 17 describes that Shoukri was found "huddled against the back fire door". The map of the first floor prepared by Alistair Simpson and referred to at page 23 of the committal papers shows that there are three flights of stairs down from the first floor of the premises, one which leads to a fire exit and which is presumably the door to which Constable Mercer referred. There is, however, no evidence to show that any of those who were with Shoukri at this point were wearing anything that can be described as paramilitary clothing. This may be contrasted with the statement of Constable Nugent at page 13 who said that he

> went down a flight of stairs and observed a large number of male persons at the bottom of the stairs, some of whom were wearing combat trousers and boots. I questioned a male person whom I now know to be Alan McClean, DOB 13.5.86, u/e of 27 Westland Drive, Belfast. I escorted McClean up the stairs into

> the bar and back down another flight of stairs and onto York Road.

This seems to be a different flight of stairs as there is nothing to suggest that McClean and Shoukri were together, and therefore nothing to show that Shoukri was wearing paramilitary style clothing, or was in immediate proximity to anyone who was wearing such clothing. At its height the evidence merely establishes that Shoukri was one of a number of persons on the premises at the same time as others who were wearing what may be described as paramilitary clothing, but, as the defence have indicated, not everyone who was present has been prosecuted.

[19] The second limb of the prosecution case is that two fibres recovered from the head hair combings attributed to Shoukri were indistinguishable from the constituent fibres of a number of balaclavas found on the premises. See the statement of Jason Russell Bennett at page 146 of the papers. Two such fibres were also recovered from the combings attributed to McKenzie. Mr Bennett described the significance of these findings in the following passage:

> The finding of such a small number of fibres would provide only weak support for the proposition that either Mr Shoukri's or Mr McKenzie's head had been in recent direct contact with the balaclavas. However, fibre retention is affected by hair length and fibres are readily lost over time. It was my understanding that the head hair combings of Mr Shoukri and Mr McKenzie were taken five hours and four hours respectively after the incident and that they both had short hair. Therefore, fibres transferred to their head hair could have been lost.
>
> It should be noted that these fibres could also have been deposited onto Mr Shoukri's and Mr McKenzie's head hair as a result of a secondary transfer via an intermediary item(s).

[20] The finding of such a small number of fibres therefore only provides weak support at best for the proposition that Shoukri had worn one of the balaclavas found in the premises.

[21] The third limb of the prosecution case against Shoukri is that his handwriting has been identified as that of the author of exhibit KB9. This was found on McKenzie, but the prosecution case is that it was composed by Shoukri. The first part of this statement is a historical resume of the history of the UDA in which it is described as becoming

> …a well oiled ruthless killing machine which was name (sic) the Ulster Freedom Fighters. They matched and indeed surpassed the IRA in political assassinations. Some of these volunteers gave many years of their lives in jail, whilst others paid the supreme sacrifice with their lives.

[22] Part of the next page is obliterated in my papers but the text continues:

> Thank you for showing your support tonight. You know now the PIRA has surrendered. This in itself was a victory for the Loyalist community although, our own Unionist politicians and the Secretary of State don't want to seem to give us any consessions (sic). So we must now take our fight into the political arena. However this does not spell the end for the UDA. We want to reassure you all that the Ulster Defence Association is here to stay. I would also like to take this opportunity to let our prisoners and their families know that we will continue to fight for them. And while Hugh Orde continually calls us criminals and puts only North Belfast Brigade staff in jail on trumped up charges we remain as strong as ever. We'll never go away you know!!

The document concludes with the following:

> "So tonite (sic) we would like to show our appreciation to some of them who have made it here tonite (sic) (get Willie to hand out plaques). Tonite (sic) we would also make a presentation to the North Belfast Brigade on behalf of the volunteers who lost their lives. These men shall never be forgotten.

[23] In R v Adams Lowry LCJ addressed the meaning of membership of a proscribed organisation in the following passage:

> Belonging to a recognisable organisation means being a member of it. To profess, in its ordinary connotation, means to declare openly, announce, affirm, avow, acknowledge or confess. A profession may be made not only by words but by conduct, but to profess something is a positive intentional act and the conduct relied on must therefore be deliberate and clear.

This analysis of the concept of membership is equally valid when considering the provisions of the Terrorism Act 2000.

[24] Naturally a good deal of attention was devoted to a close analysis of the various actions and expressions which were relied upon by the prosecution in the Adams case and which Lowry LCJ found were insufficient to justify the accused in that case being put on trial on a charge of membership of the IRA.

[25] However, each case turns on its own facts. The portion of the document Exhibit KB9 alleged to be in Shoukri's handwriting which I have quoted earlier in which expressions such as "I", "We", and "Our" occur, are, in my view, capable of supporting the inference that the author of this passage was identifying himself with the UDA as a member of not merely as a supporter. Statements such as:

> We remain as strong as ever. We'll never go away you know!!

are clearly capable of being interpreted as not merely an expression of support for the UDA, but a declaration by the writer that he is a member of the UDA. To adopt the definition of Lowry LCJ set out above, I am satisfied that it is open to a tribunal of fact to conclude that the writer of these expressions was declaring, announcing, affirming, avowing and acknowledging his membership of the organisation in question. In addition, the reference to a presentation being made to commemorate members of the UDA who had lost their lives, coupled with the exhortation to those present to show their support for the UDA, can properly be construed as inviting support for the UDA by praising them and thereby seeking to sustain their morale and effectiveness as an organisation. One must also remember that there is evidence to suggest that these exhortations and declarations were to be delivered in the Alexandra Bar in which, as I have already pointed out, there was hanging a UDA flag, and in respect of which there is evidence that UDA memorial plaques had been ordered for delivery the following day. The prosecution case is that those concerned were taking part in a rehearsal for such an event the following day.

[26] I am satisfied that there is sufficient evidence to justify Shoukri being put on trial on Counts 1, 2 and 3 and I accordingly refuse to enter a No Bill on those counts.

The case against Robinson

[27] Robinson is charged with two counts of membership in Counts 4 and 5. The evidence against him is that he was found lying behind the bar on the

first floor of the premises by Constable Fletcher. Without more this would be insufficient to justify his being placed on trial on these charges. However, there are three strands of evidence upon which the prosecution rely, all relating to fingerprint evidence.

[28] The first is that his fingerprint appears on a receipt from Prestige Trophies. There is evidence that this firm produced a UDA commemorative plaque and the fingerprint is evidence linking Robinson to that. In addition, in interview between pages 232 and 234 he admitted that he had ordered and later paid for this plaque, as well as giving the maker a list of the names of those who were to be included upon it, although he denied choosing the design.

[29] His fingerprints were also allegedly found on two memo sheets now contained within Exhibit RC26, documents which were found in the handbag of Zoe Flynn at 6 Clare Heights during a search on 4 March 2006. These are at pages 456 and 457 of the exhibits. The internal evidence from these documents supports the inference that they relate to preparations for an event to be held at the Alexandra Bar, for example there are references to "cleaning" on 3 and 4 March, and to "tickets for doo (sic) Alex 3rd March". There are references in the document to, inter alia, "(Brigade)", "UFF" and "UDA", as well "UFF mirror". This evidence, together with the evidence relating to the admitted ordering of the UDA commemorative plaque, is capable of sustaining an inference that the defendant was closely involved in preparations for a UDA commemorative event.

[30] Finally, Robinson's fingerprint was allegedly found on page 449 of the pages allegedly written by Shoukri to which I have already referred, that is the page which contains the passage to which I have already referred, concluding with the words "we'll never go away you know!!". Mr McCrudden on behalf of Robinson argues that at best all of this evidence is evidence that Robinson supports, or may be a camp follower of, the UDA. However, for the reasons I have already given, I am satisfied that the words used are capable of supporting the inference that the writer is a member of the UDA. That Robinson handled a document of this nature, taken with the other material to which I have already referred, amounts to sufficient evidence to justify him being put on trial on the counts of membership of the UDA because a court could conclude that only a member would be involved in (a) making the preparations which Robinson appears to have been involved in for a commemorative event in support of the UDA, and (b) be permitted to handle what, from its contents, clearly appears to be a "keynote" address to be delivered at that event. I therefore refuse to enter a No Bill in relation to the charges relating to Robinson.

The case against McKenzie

[31] McKenzie is charged with membership of the UDA in Count 6, and in Count 7 with support for UDA under Section 12(2)(a) by assisting in arranging or managing a meeting on behalf of the UDA on 2 March. The prosecution rely on his presence in the Alexandra Bar when the police entered it on 2 March, and the evidence of Sergeant Field is that McKenzie was found on stairs at the rear of the building. There is evidence of fibres taken from head hair combings from McKenzie which provides a weak link to the balaclavas as can be seen from the passage from the statement of Jason Bennett quoted earlier.

[32] Of greater significance is that the papers which constitute Exhibit RB9 were found in his pocket. These papers include the passages from the speech relating to the UDA already quoted. It also includes a list of those who were to receive the UDA plaques; notes of the tasks that had to be performed in order to prepare the premises, and a receipt from Prestige Trophies.

[33] The handwriting evidence identifies McKenzie as the writer of the notes to be found at page 451 which list various tasks to be carried out to prepare the premises, such as the number of plaques required, cleaning materials etc. In addition his fingerprints have allegedly been found on some of these documents.

[34] Then there are the documents from Exhibit RC26 which were found in Zoe Flynn's handbag in her home on 4 March 2006. Some of the contents of these documents have been identified as being in McKenzie's handwriting. Page 456 is the document containing the numbers of men who were required for cleaning on 3 and 4 March. This document is headed "(Brigade)" and "UFF, UDA". At page 457 is another document which, inter alia, lists "tickets for doo (sic), Alex 3 March". Finally, at page 458 is to be found a list of names, clothing and shoe sizes. Not only have these been identified as being in McKenzie's handwriting, but his fingerprints have been found on a number of these documents.

[35] These documents are linked to McKenzie by being found in his possession, by being in his handwriting and with his fingerprints on them, and support the inference that he was intimately involved in the organisation of an event to be held at the Alexandra Bar, and that his presence in the bar on 2 March was in connection with the rehearsal for a gathering in support of the UDA in the bar on 3 March. When one takes into account the content of the speech to which I have already referred that adds weight to the argument that this was to be carried out on behalf of the UDA. Not only that, but the nature of the speech was such that it is capable of supporting an inference that the person in possession of that speech was not merely a supporter of, but a member of, the UDA when it is taken in conjunction with the remaining evidence relating to the documents. I am satisfied that there is sufficient

evidence to justify McKenzie being put on trial for the charges which he faces and I therefore refuse to enter a No Bill in relation to Count 6 and Count 7.

The case against McHenry

[36] McHenry is charged with membership of the UDA between 13 August 2002 and 3 March 2006 in Count 8, and with professing membership of the UDA on 2 March 2006, in Count 9. The evidence in relation to McHenry is that he was found in the public bar of the Alexandra Bar wearing combat trousers and black boots. A DNA sample from the mouth of one of the balaclavas found on the premises matched his DNA. There is also fibre evidence which is described by Mr Bennett as weakly supporting the proposition that the shirt McHenry was wearing had been in contact with one of the bomber jackets discarded in the bar.

[37] DNA evidence linking him to the balaclava, together with the fibre evidence linking him to the bomber jacket, and his wearing combat trousers and boots is evidence which is consistent with his wearing paramilitary uniform. That is sufficient to justify his being put on trial for membership of the UDA on 2 March and for professing membership of the UDA on that date on the basis that there is evidence upon which a court could be satisfied that he was present to take part in a rehearsal as a uniformed member of the UDA. I therefore refuse to enter No Bills on Counts 8 and 9.

The case against McClean

[38] McClean is charged with a single count of supporting a proscribed organisation by assisting in managing a meeting on behalf of the UDA, contrary to section 12(2)(a). The evidence relied upon by the prosecution falls into two parts. The first is that he was found in the Alexandra Bar by the police amongst a group of males who were wearing combat trousers and boots. There is also evidence that images of people in paramilitary uniform were found on his mobile phone; a video found at his home contains what the prosecution say is footage of a UDA/UFF show of strength; and a CD with the theme music to the "Young Guns" movie was found in his house.

[39] Whilst this undoubtedly gives rise to suspicion that McClean may be a member of the UDA, without more it falls short of evidence, as opposed to speculation, which could lead a court to be satisfied beyond reasonable doubt that by his mere presence in the bar in these circumstances, and by possession of these items, he was assisting in arranging or managing a meeting on behalf of the UDA. At best it is evidence of sympathy for the UDA but nothing more.

[40] The remaining evidence relied upon is that his fingerprints had been found on Exhibit KB9, the contents of which have already been quoted. The

handling of a document containing such sentiments, taken with the other material relating to him, could lead the court to conclude that his presence was not merely indicative of sympathy for the UDA, but was evidence of his involvement in arranging a meeting at which such a speech was to be delivered. I am satisfied that this is evidence which could justify the court in concluding that a person who was present in the circumstances in which McClean was found, and who had handled a document of such a nature, was present to assist in managing a meeting on behalf of the UDA. I therefore refuse the application for No Bill on Count 10.