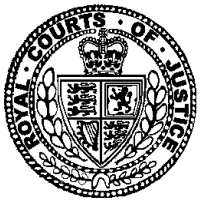

Neutral Citation Number: [2018] EWCA Crim 1599

Case No: 201306009/B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Central Criminal Court
HHJ Padget
T20077210

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2018

Before :

LORD JUSTICE GROSS

MR JUSTICE TURNER
and
MR JUSTICE WILLIAM DAVIS

- -

Between :

Peter Jones	**Applicant**
- and -	
Regina	**Respondent**

- -
- -

The Applicant in Person
D Atkinson QC and K Wilkinson for the **Respondent**

Hearing dates: 20 June 2018

- -

Approved Judgment

Mr Justice William Davis:

Introduction

1. On 21 March 2006 at around 9.30 p.m. a man named Ward was shot dead at his home in Clacton, Essex. In May 2006 three men – Walker, Bhaskaran and Brown - were arrested in relation to Ward's death. In August 2006 a man named Valentine was arrested. The three men arrested in May 2006 were charged with the murder of Ward and sent for trial. For reasons which are of no relevance to this application, Valentine was not charged at that point. He was charged and sent for trial in December 2006. By then Brown had pleaded guilty to an offence of assisting an offender and agreed to give evidence against the other accused. On 30 April 2007 the trial of Walker, Bhaskaran and Valentine began at the Central Criminal Court. The jury was discharged on 16 May 2007 because two other men – the applicant, Peter Jones, and a man named Taylor – had been arrested in Spain. Both were alleged to have taken part in the murder of Ward. The trial judge agreed that it was appropriate to await the extradition of the applicant and Taylor so that there could be a trial of all five men. That joint trial commenced on 8 November 2007. On 8 January 2008 the jury convicted the applicant, Valentine and Taylor of murder. The other two defendants were acquitted.

2. Taylor applied for leave to appeal against his conviction and sentence. Valentine applied for leave to appeal against his sentence. The applications for leave were granted. The appeals were heard by this Court on 7 July 2009. The appeals were dismissed: [2009] EWCA Crim 1617.

3. It was not until November 2013 that the applicant applied for leave to appeal against his conviction for murder. His application was nearly six years out of time. It was based substantially upon evidence not called at his trial. The applicant provided statements from a number of witnesses. He referred to the existence of other witnesses from whom he would be able to obtain statements when the court made arrangements via special measures and/or anonymity to ensure their safety. He sought a directions hearing before the full Court before any consideration of his application for leave to appeal. The papers were considered by a single judge who made an order on 14 December 2015. The single judge refused to order a directions hearing or to make any order in relation to anonymity of witnesses. The single judge referred the applications for an extension of time and for leave to appeal to the full Court.

Procedural history in this Court

4. The single judge granted a representation order for Leading Counsel and solicitors. Legal aid in respect of the solicitors was limited to dealing with witnesses and making any application in relation to them. At the time of the order solicitors had already been working on behalf of the applicant for some time as had John Cooper QC. Those representatives continued thereafter to represent the applicant pursuant to the representation order.

5. We observe that for an application already almost six years out of time progress had been slow up to the point of the single judge's consideration of the papers. Matters did not move any more quickly thereafter. On 26 July 2016 there was a directions hearing before the full Court. Mr Cooper represented the applicant. Duncan Atkinson QC represented the Crown. It is not necessary to rehearse in detail the directions given by

the Court. One direction concerned any witness upon whom the applicant intended to rely and in relation to whom an anonymity order was to be sought. The applicant was required to disclose the details of any such witness to the Serious Crime Directorate to allow appropriate enquiries to be made as to the reliability of any such witness. The applicant in June 2017 provided the personal details of someone thus far referred to by him as Witness A.

6. As a result of the disclosure given by the applicant as to the identity of Witness A, the Crown disclosed further material at various points during 2017. This material consisted of: letters sent by Witness A to the applicant in 2007 whilst he was in custody awaiting trial together with a letter sent during that period by the applicant to Witness A; transcripts said to be of conversations recorded during prison visits over the same period; transcripts of telephone calls made by the applicant to Witness A and others from prison in 2016 and 2017.

7. Over the latter months of 2017 and into the early months of 2018 there was correspondence between the parties in relation to the disclosure provided by the prosecution. In August 2017 the applicant's solicitors sought disclosure of the recordings of the prison visits upon which the transcripts were based. The solicitors stated that the applicant's recollection was that the transcripts did not accurately reflect all of the conversations or their context. The Crown responded by offering to make available the recordings to the applicant's legal representatives to allow them to check the transcripts against the recordings. There followed several exchanges of correspondence in which the solicitors sought disclosure of the recordings to the applicant himself and the Crown declined to supply unrestricted copies of the recordings to the applicant. The solicitors' rationale for seeking disclosure to the applicant was that he was the only person who could comment on the accuracy of the recordings since he was the one who had been present at the relevant visits. The Crown's refusal arose from a concern that disclosure of the recordings could lead to the means by which the recordings were made becoming apparent. The tactics used by the prison service and the police were sensitive and continued to be used in current investigations.

8. By the end of February 2018 it was clear than an impasse had been reached. A further directions hearing before the full Court was ordered. This took place on 1 May 2018. By this point the applicant had dispensed with the services of the solicitor who had been representing him since 2014. He continued to instruct Mr Cooper though it is apparent from what Mr Cooper said in the course of the hearing that the relationship between the applicant and Mr Cooper was strained. Two substantive applications were made on the applicant's behalf. First, application was made for disclosure of the authorities issued pursuant to the Regulation of Investigatory Powers Act 2000 whereby the audio recording of prison visits was authorised. The prosecution's stance was that disclosure was not required by reference to their duty of disclosure in the context of an appeal as explained in Nunn v Chief Constable of Suffolk Constabulary [2015] AC 225. Second, the Court was invited to order disclosure of the recordings of the prison visits to the applicant himself. Mr Cooper made the same argument as had been put in correspondence by the solicitors. That argument was met with the same objection as had been raised in correspondence.

9. Both applications were refused. The Court explained that there was no basis to doubt the legality or proper authorisation of the covert recordings and declined the invitation

to inspect the RIPA authorisations in an ex parte PII hearing. The Court refused to order disclosure of the recordings to the applicant. It was noted that the assertion was that the transcripts were incomplete and/or had been edited. This assertion could be tested by the applicant's legal representatives checking the transcripts against the recordings coupled with the applicant's instructions as to the matters omitted in the transcripts. The Court observed that the allegations about the inadequacy or inaccuracy of the transcripts remained unparticularised.

10. Unsurprisingly the Court concluded that the time had come for the application for leave to appeal and any associated matters to be listed for a full hearing. No decision was taken in relation to special measures and/or anonymity, those issues being left for the full hearing. In due course the hearing was fixed for 20 June 2018.

11. On 19 June 2018 the lawyer at the Criminal Appeal Office dealing with the application spoke with the applicant. The applicant informed him that he no longer wished to be represented by Mr Cooper. This was not wholly unexpected in view of what had been said in court on 1 May 2018. We note that the Court on that occasion made it clear to the applicant that he would have to conduct the application himself were Mr Cooper to withdraw. At the commencement of the hearing on 20 June 2018 we invited the applicant to confirm that he did not wish to be represented by Mr Cooper and that he understood that in consequence he would have to present the application himself. The applicant did so confirm. Mr Cooper's instructions were withdrawn. We proceeded on the basis of the applicant's oral submissions though we had the assistance of written materials prepared prior to the hearing by Mr Cooper.

The evidence at the trial

12. In March 2006 Taylor was contacted by his ex-partner. She complained that she and her children had been threatened by someone named Stuart Higgins. Taylor decided to seek out Higgins in order to exact revenge. He gathered a group of friends and associates to assist him. At this time Higgins was living at the home address of the Ward family in Clacton. On the evening of 21 March 2006 Taylor's group drove to Clacton in two cars. One car was a Ford Focus driven by Brown. The other was a black Mercedes. The prosecution case was that this was the applicant's car and that he was driving it. The other members of the group were Valentine, Walker and Bhaskaran. The group arrived at the Ward house with a loaded sawn-off shotgun. The prosecution case was that all members of the group save for Brown knew about the presence and proposed use of a loaded firearm because it had been discussed at a meeting at Taylor's flat before the group had gone to Clacton.

13. Higgins was at the house when the group arrived as was John Ward. Members of the group went to the front door. It was answered by Higgins who must have foreseen that something was afoot because he armed himself with a knife. Ward was standing just behind Higgins. The man holding the shotgun – said by the prosecution to be Valentine – fired the gun. He intended to kill or injure Higgins. In fact, the shot hit Ward in the throat and he died within the hour.

14. At the trial each of the defendants accepted presence at the scene. They each gave evidence at the trial. The applicant said that he had been asked by Taylor to go on a trip to speak to Higgins. He was aware that Higgins had a violent reputation. With that in mind he borrowed the sawn-off shotgun from a friend. He did not know that it was

loaded. On arrival at the Ward house he went to the front door taking the gun with him. At the front door the gun went off accidentally and Ward was shot. The applicant said that he ran back to the car being driven by Brown and later disposed of the gun.

15. Taylor's case was that he had recruited Valentine and others to go to speak to Higgins. He said that he did not go up to the house because he thought that it would be unwise were he to confront Higgins. He said that he knew nothing about a gun. It was after the event that Valentine told him that the applicant had produced a gun and fired it. Valentine told the jury that he had gone to the Ward house at the request of Taylor. He had accompanied the applicant to the front door where the applicant without warning had produced a gun from a bag and shot it. Until that point he had known nothing of the gun.

16. Walker and Bhaskaran were acquitted by the jury. Walker's case was that he had remained with Taylor in a car a little way from the house unaware that anyone had a gun. Bhaskaran admitted going to the front door of the house but said that he knew nothing of a gun. The jury clearly accepted the possibility of those accounts being true.

17. The prosecution rebutted the accounts given by the defendants as to the circumstances in which the gun was used principally via the evidence of Brown. He said that it was Valentine who had taken the gun from the car when he went up to the house. He stated that, moments after the sound of the gun being fired, Valentine had come back to his car holding the gun which he put away in a holdall. Brown's account was supported by the fact that Valentine was a man with a history of using firearms, in particular an armed robbery in 1994 in which he had used a loaded shotgun and for which he had received a sentence of 18 years' imprisonment.

The issues in the proposed appeal

18. It is not suggested that the conduct of the trial whether by the judge or by those representing the applicant was anything other than fair and appropriate. The judge directed the jury properly on the law applicable to the case and he summed up the applicant's case fully and fairly. What the applicant now says is that he was not present at the scene of the murder of Mr Ward. Rather, when Mr Ward was shot he was at a restaurant in Southend on Sea some 50 miles from the Ward home in Clacton. He seeks permission to adduce evidence from witnesses who were with him at the restaurant. He accepts that this account is directly contrary to the evidence he gave at trial. His case is that he told the jury that he was at the scene of the shooting and that he had fired the fatal shot, albeit by accident, because he and his family had been threatened and subjected to violence by Valentine.

19. The applicant has served witness statements from the following: Matthew Jones (his brother); Carmen Jones (his wife); Steven Lock; Gary Harris; Bobbie Craddock; Mihaela Ionita (Carmen Jones's sister); Witness A (whose identity was disclosed in June 2017). He also made two statements himself. The solicitor who acted for the applicant until earlier this year has provided a short statement explaining that the gathering of these various statements has been organised by Carmen Jones and that the solicitor's role essentially was to act as a conduit.

20. The statements of Matthew Jones and Witness A are the effect that they met the applicant in a restaurant in Southend on Sea at around 9.00 p.m. on 21 March 2006 and

remained with him there for around an hour and a half. Whilst they were there, Steven Lock spoke to them briefly, Lock being a friend of Witness A. On his account Lock saw them by chance and in passing.

21. The other statements concern events said to have occurred in the run up to the applicant's trial in which he was threatened and assaulted by Valentine and Taylor and members of his family were threatened and attacked by persons unknown apparently acting on behalf of Valentine and Taylor. For the purposes of the trial which had begun on 30 April 2007 Valentine had provided a defence statement asserting that, whilst he had been present at the scene of the shooting, he did not have the gun and that the applicant had fired the fatal shot. At this point the applicant was not in the jurisdiction and not a participant in the trial. The applicant's case is that, once he had been extradited and joined to the indictment, Valentine had to ensure that the applicant would fall in line with the account to which Valentine had committed himself even though the applicant in fact was not present at the scene of the shooting. Although Taylor had not been part of the first trial, it suited his purposes to align himself with Valentine's account. So it was that Taylor was party to the intimidatory conduct.

22. None of the evidence served by the applicant was adduced in the trial which concluded in January 2008. In considering whether to give leave to appeal, we must consider whether it is arguable that the evidence should be received by reference to the criteria in Section 23(2) of the Criminal Appeal Act 1968. The prosecution position is that it is not arguable that the evidence should be received. They say that the evidence does not appear to be capable of belief; rather the reverse. They say that there is no reasonable explanation for the failure to adduce the evidence of alibi at trial. In order to make good this position, the prosecution has served further evidence. It is not disputed that, in principle, this court is entitled pursuant to Section 23 of the 1968 Act to receive fresh evidence served by the prosecution if it is in the interests of justice to do so: see Hanratty [2002] 2 Cr.App.R. 30 at paragraphs 101 to 105. We shall consider the substance of the evidence and its effect after consideration of the argument by the applicant as to the reliability and provenance of the fresh prosecution evidence.

Provenance of prosecution fresh evidence

23. Some of the material served by the prosecution is accepted by the applicant as being genuine and real. He agrees that the letters dating from 2007 were sent to him by Witness A or, in one case, sent by him to Witness A. He accepts that transcripts of telephone calls made by him from prison in 2016 and 2017 are accurate though he argues that they have been taken out of context. However, he disputes the accuracy of the transcripts of the covert recordings of personal and family visits to him whilst he was on remand awaiting his trial.

24. It will be recalled that on 1 May 2018 the court declined to order disclosure of copies of the recordings of prison visits to the applicant personally. At that point the applicant's case was that the transcripts were not a full record of the visits which occurred. He claimed that they were selective. He said that he needed to listen to the recordings so that he could identify where there were gaps. On his behalf Mr Cooper said that he expected the transcript to be identical to the recording but that only the applicant would be able to identify where the relevant gaps were.

25. Before us the applicant's case was very different. He said that the transcripts of the prison visits in 2007 were fabricated. He agreed that the visits had taken place but said that the conversations he had with his family and friends were wholly different to that contained in the transcripts. He argued that there was in reality no audio material at all. The transcripts were a complete invention. He supported this proposition by reference to the fact that neither he nor his then legal representatives had listened to the recordings. We pointed out to the applicant that various offers had been made by the prosecution affording his then legal team the facility to listen to the recordings. If he were correct, that would mean that, had his lawyers taken up one or other of these offers, the prosecution then would have had to admit that no recordings existed and that the transcripts were a fabrication. The applicant agreed that this would have been the result. He suggested that the whole exercise was a ruse on the part of the prosecution.

26. We were told by Mr Atkinson QC on behalf of the prosecution that at least two lawyers from the Crown Prosecution Service and various police officers had listened to the recordings to check the transcript. We had no direct evidence of this. However, we have the evidence of an office manager employed by Essex Police, Stephen Rawson. He confirms the provision of the recordings by HMP Woodhill to the police and the transcription of the recordings by another witness whose evidence has been served, Katherine Judge.

27. Mr Atkinson told us that arrangements could be made for the recordings to be available at court within 24 hours so that we could listen to at least some of the recordings whilst checking them against the transcript. We did not take up Mr Atkinson on his offer to make those arrangements because we considered it wholly unnecessary. The notion that the prosecution would manufacture some 600 pages of transcript purporting to be transcribed from recordings which do not exist is of itself completely fanciful. The unreality of that proposition is all the greater when the prosecution have made repeated offers to legal representatives giving those representatives the chance to listen to the non-existent recordings.

28. We are quite satisfied that the prison visits in 2007 were recorded. We are satisfied by the evidence of Mr Rawson that the recordings were transcribed and that the transcripts provided to the applicant constitute Katherine Judge's best effort to transcribe the entirety of the conversations as recorded. Whether there are any errors in the transcription or whether the recording itself was incomplete for any reason is not possible to say with absolute certainty. We have no reason to believe that there have been transcription errors or gaps in the recording. Nothing has ever been advanced on behalf of the applicant to identify any errors or gaps. But this is not relevant to the point now made by the applicant. We have no doubt at all that this point is without any foundation at all and we reject his allegation of fabrication.

Significance and effect of prosecution fresh evidence

29. The critical part of the applicant's case is the alibi evidence he seeks to adduce, in particular Witness A. As we have indicated it was not until the middle of 2017 that her identity was disclosed by the applicant. Her witness statement is dated 20 March 2016. Her account of the events on 21 March 2006 is that she planned to meet the applicant to discuss working for him in Spain. At the restaurant she claims that there was a

detailed discussion about the proposed employment. At the end of the evening it was agreed that she would get back to the applicant by the end of the week. She did not do so. "As it turned out, I was not able to get in contact with him again…" is how she puts it. She learnt of the allegation that the applicant had been involved in the shooting of Ward in August 2006 from the applicant's father. She realised at that stage that she could provide him with an alibi. In May 2007 she was told that the applicant had been arrested in Spain and was to stand trial in relation to Ward's murder. She contacted Lock who agreed to assist. She had to rethink what she intended to do once the incidents of violence began but matters were taken out of her hands by the decision of the applicant to admit that he was the gunman. She learnt of that decision from the applicant's father. On the face of her statement she had no other contact with the applicant until late in 2015 when she agreed to visit the applicant in prison.

30. On the face of her statement Witness A is someone with no closer connection to the applicant than as a potential business associate. Her dealings with the applicant after March 2006 were very much at arm's length. She had no opportunity to discuss matters directly with the applicant until shortly before she made her witness statement. In fact, this picture is false. In 2006 and 2007 the applicant and Witness A were in an intimate relationship. When the applicant went to Spain after the shooting, he spent at least some of the time living with Witness A. This factor alone is sufficient to undermine the credibility of her evidence.

31. The evidence of Witness A is discredited entirely in the light of the material disclosed by the prosecution since her identity was revealed. We deal first with the letters written in 2007. The letters from Witness A to the applicant establish very plainly the nature of their relationship. They were written when the applicant was remanded in custody and awaiting trial. According to her evidence as it now is, Witness A during this period had located the witness Lock and was ready herself to give exculpatory alibi evidence. Yet no reference of any kind is made by Witness A to the vital role that she could play in the applicant's trial. The letter from the applicant to Witness A is of even greater significance. After telling her that he had had a legal visit, he wrote "…as you know it's not looking rosy for me and the time leading up to my trial is flying. As you know the police are taking great pleasure in twisting this into something that it's not and now I think I should stand up and be counted for the part in which I played…" We asked the applicant why he wrote this and what he meant by "the part in which I played" given that he had played no part at all. Moreover, if the evidence of Witness A is true, she knew that he was not involved in the shooting. The applicant told us that this was his way of telling Witness A what he intended to do in terms of giving a false story at this trial. We reject that proposition without hesitation. This was a private letter to a woman with whom he was in a relationship. There was no reason for him to speak in code. Even if there had been, what he wrote would have given no indication to Witness A what he proposed to do. The true meaning of the letter is plain on its face. Thereafter Witness A wrote further letters to the applicant in which she said that she would see him at court and she encouraged him to be positive because "stranger things have happened". It is inconceivable that Witness A would have written in such terms had she been someone who could provide a true defence to the applicant.

32. We turn to the prison visits. Contrary to what she has said in her witness statement, Witness A visited the applicant in prison on four occasions between July and October 2007. The visits were covertly recorded and form part of the transcribed material. The

applicant's case is that he only decided falsely to admit being present at the shooting in about September 2007. In private discussion prior to that point he would have had no reason not to discuss his true defence, namely that he was in a restaurant with Witness A. During the visits in July and August 2007 the applicant and Witness A discussed what defences might be open to him. At no stage was there any mention by either of them of the alibi defence of which each was fully aware. It is fanciful to suggest that the applicant and Witness A would have made no reference at all to the alibi defence in those conversations had the defence been a true one. We are bound to conclude that there was no reference to the alibi because it was not a true defence.

33. The final aspect of the prosecution disclosure to which it is necessary to refer is the 2017 telephone material i.e. recordings of conversations between the applicant and Witness A. The applicant agrees that the transcripts of these conversations are genuine. The most significant conversation took place on 3 August 2017. This was after the disclosure of material from 2007 and from 2016. After preliminary pleasantries the applicant said "I think me (sic) appeal's gone". When Witness A asked why, he told her that his prison visits at HMP Woodhill had been bugged (as he now knew from the disclosure) and that there were 500 pages of transcripts. He said that "if they have done what I think they've done then me (sic) appeal's gone". Witness A urged the applicant to remain positive and that there had to be a way to keep the appeal on track. It is to be remembered that by this point Witness A had made her witness statement and her identity had been disclosed to the prosecution. The applicant responded by saying that, if the prison visits had been fully recorded, his appeal would have no prospect of success. This is how we interpret the phrase "if they've bugged our time and they've done like a good job then I'm fucked".

34. This is not the conversation between a man who knows that any transcripts were fabrications and did not reflect the true conversations he had in prison and a woman who was in a position to provide him with a true alibi. This is a conversation between two people who are fully aware that they had hoped to present a false alibi to support an appeal, a hope which now appeared to be dashed.

35. The prosecution material taken as a whole totally undermines the credibility of Witness A and of the evidence she purports to give of alibi. We are satisfied on the basis of that alone that the evidence of the applicant being in a restaurant in Southend on Sea at the time of the shooting is false. It follows that it is not capable of belief. The material in relation to Witness A undermines the entirety of the evidence of alibi.

36. It is true that Matthew Jones supports the evidence of alibi and there is no evidence that he was party to any discussion when the applicant was in prison awaiting trial. However, his witness statement is dated May 2013. In that statement he says that he spoke to the applicant at the end of August 2006. It was then that he discovered that the applicant was suspected of involvement in the shooting. Matthew Jones said that he would go with the applicant to the police to sort it out given that they had been together in Southend on Sea. The applicant supposedly said that it was more complicated than that. Why that should have been so is not easy to identify. Valentine had yet to be charged with murder and he had not blamed the applicant since he had remained silent in interview. On the face of it there was no reason why Matthew Jones should not have spoken to the police forthwith. In his witness statement he goes on to explain that, once he knew the applicant had been arrested, he knew that he would need to tell the police of the applicant's alibi. But he never did so and he gives no explanation

for not having done so. We also acknowledge that the applicant is able to rely on the evidence of Steven Lock. This witness purports to be able to recall a chance meeting which occurred some 12 years ago. Moreover, he gives no satisfactory explanation as to why he took no steps at all to inform the police of the position when, if he is telling the truth, he knew that an innocent man was on trial for murder and was falsely admitting involvement due to threats of violence against his family. The evidence of these witnesses does not begin to overcome the issues arising from the evidence of Witness A.

37. In light of our conclusion in respect of the evidence of alibi, it cannot be arguable that the applicant's conviction was unsafe. The only basis on which he can make that argument is if there is evidence capable of belief that he was not at the scene of the shooting. For the reasons we have given there is no such evidence. In those circumstances it is not necessary to consider the other criteria to be satisfied under Section 23 of the 1968 Act. The explanation for the failure to adduce the evidence at trial self-evidently was not reasonable.

38. As we have noted, much of the new evidence served by the applicant goes to the question of threats of violence and/or the use of violence whether on himself or members of his family. It is said that the violence, actual or threatened, was the reason why he falsely said that he shot Ward when in fact he was in Southend on Sea. Since we have concluded that evidence of alibi is false, his admission that he was at the scene of the shooting can hardly have been due to the use or threats of use of violence.

39. Nonetheless, we shall consider the evidence in respect of intimidatory acts since there is no doubt that the applicant's evidence at trial was that he had shot Ward when the evidence as a whole demonstrated that Valentine had used the gun. The applicant's argument is that the false account he gave can only have been because he was intimidated. We are satisfied that this argument is false for the following reasons:

    (a) The prison visit recordings reveal the applicant had agreed that Valentine could blame him for shooting Ward prior to the first trial on the basis that the applicant had no intention of returning to the UK from Spain and because Valentine was at risk of a very long minimum term given his previous convictions.

    (b) The recordings indicate that the applicant in deciding on what defence to run had in mind how best to protect Valentine for the same reason that he had agreed to take the blame when he was in Spain whilst also protecting his own position.

    (c) There was no mention of any threats or acts of violence during the visits in August and September 2007 i.e. when the intimidation was said to be at its height

40. The material on the prison visit recordings is inconsistent with the allegations now made in relation to attacks on the applicant's father and threats made to members of his family. We do not consider that it is necessary to consider the allegations in detail. It may be that the way in which this application for permission to appeal has been mounted and supported by witness evidence will be the subject of a further and separate criminal investigation. We shall say nothing which might affect such an investigation.

Our conclusion on the core issue relating to the alibi renders detailed consideration of these matters otios.

41. The only further matter on which we need to make a brief observation relates to an incident in 2016 involving the applicant's family. This incident which involved the discharge of a firearm cannot sensibly have anything to do with this application. The appeals of Valentine and Taylor were disposed of in 2009, Valentine having been convicted and sentenced on the basis that he was the man who shot Ward. Whatever the outcome of an application by Peter Jones, it would have no effect on the position of Valentine or Taylor.

Conclusion

42. For all the reasons we have given we are satisfied that the fresh evidence of alibi is completely devoid of credibility. It does not satisfy the criteria in Section 23 of the 1968 Act. With that conclusion the entire edifice of the applicant's case collapses. His grounds of appeal are unarguable. We refuse his application for leave to appeal against conviction.

43. In those circumstances it is unnecessary for us to consider what (if any) special measures could or should be afforded to the witnesses.