**CHAPTER 18**

For the prosecution to rely simply on Duane’s written statement creates a problem of hearsay. Hearsay evidence is generally inadmissible unless it can be brought within a common law or statutory exception.

The relevant statutory provision would be s. 117(4) CJA 2003 as this is a statement prepared in contemplation of criminal proceedings. The reason for the witness’s unavailability would be due to the witness’s fear. Duane is clearly an identifiable witness and we will assume he had the requisite capability at the time he made the statement. As the prosecution would be relying on fear as the condition for admitting Duane’s written statement, fear needs to be proven and leave to admit the statement would be required. Under s. 116(4) CJA 2003, leave will only be granted if the court considers that it would be in the interests of justice to admit the statement having regard to:

(a) the statement’s contents;

(b) any risk that its admission or exclusion will result in unfairness to any party (with particular reference to how difficult it will be to challenge the statement if the relevant person does not give evidence);

(c) in appropriate cases to the fact that a special measures direction could be made in relation to the relevant person;

(d) any other relevant circumstance.

If leave is granted, Duane’s written statement will be admissible under s. 117(4). We are told that Duane is an important witness in this case. Would the admission of his evidence prejudice a fair trial? The principles in Horncastle [2009] and Riat [2012] will be applied. Regard would be had to the applicable statutory safeguards. The defendants can of course give evidence themselves or call evidence of alibi. Wayne’s credibility can still be attacked if there is evidence available to undermine his credibility. The judge retains discretion under s. 78 PACE 1984 to exclude the evidence if he concludes its admission would prejudice a fair trial and in directing the jury, the judge will stress the limitations of evidence that has not been subject to cross-examination. The prosecution would need to establish, and the court would need to be satisfied that every effort has been made to persuade Duane to give evidence with the benefit of special measures. On the assumption that Duane’s evidence is not the only evidence in the case against the defendants, his evidence is likely to be admitted as hearsay.