

Judicial Communications Office

Wednesday 11 January 2012

COURT REFUSES APPLICATION BY PSNI REQUIRING BBC TO PRODUCE FOOTAGE OF REPUBLICAN PARADE

Summary of Judgment

His Honour Judge Burgess, Recorder of Belfast, today refused an application by the PSNI to require the BBC to provide footage of a Republican parade in the City Cemetery, Londonderry on 25 April 2011.

The Court heard that the parade is an annual event organised by the 32 County Sovereignty Movement. During the course of the 2011 parade, a masked man purporting to be from the Real IRA and dressed in army style clothing appeared from the crowd and read out a pre-prepared speech. This man, together with a "colour party" of 9-10 others dressed in paramilitary uniforms and masked, had arrived in a van at the cemetery and marched up to the Republican Plot. After the speech the men dispersed. There was no police presence in the cemetery as an operational decision had been made not to deploy officers. A police helicopter did obtain some footage but it directed its cameras to a group of youths who appeared to be armed with petrol bombs after the speech concluded.

The PSNI had access to broadcast material from the BBC. The application sought access to the un-broadcast footage. The PSNI claimed this would be of maximum benefit to experts retained by the police who were intending to carry out facial mapping, voice recognition and gait analysis in order to identify the men involved. The BBC submitted that the police deliberately did not deploy any resources in the cemetery with the specific intent of relying upon the production of material from the media covering the event. The BBC also argued that the speech contained threats to the media for their part to portray the visit of the Queen to the Republic of Ireland as "acceptable". The BBC considered this message was "chilling" and felt it put members of the media directly in the sights of this terrorist group.

The Recorder said that the Court would require substantial and well-grounded evidence that any organisation such as the police would deploy such tactics with such scant regard for the life and wellbeing of the media. He said the evidence in this case did not substantiate any such claim. The judge said there was also no merit in the argument by virtue of the fact that the BBC had decided to broadcast part of the footage it had taken knowing that part of the speech mentioned the media. The Recorder rejected the argument by the BBC that they were merely being used as investigative tools by the PSNI.

The Recorder then considered the merits of the application by the PSNI. In accordance with paragraph 5 of Schedule 5 to the Terrorism Act 2000 the police may apply to a Court for an order for the purposes of a terrorist investigation. The 2000 Act requires the application to meet two conditions:

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- The Order is sought for the purposes of a terrorist investigation and there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material to a terrorist investigation;
- There are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given having regard to the benefit likely to accrue to a terrorist investigation if the material is obtained and to the circumstances under which the person concerned has any of the material in his possession, custody or power.

The Recorder said that the application by the PSNI gave no information as to the work that has already been undertaken. It was indicated to him that the experts had “a quick look at it” before making the assertion that they would need the original as it would give greater clarity. The Recorder said he had been given no indication as to the specific purpose of the material and how it is to be of substantial benefit. In order to make out the case the court would require a more detailed examination on a proper evidential basis in relation to the investigation undertaken to date, and could be undertaken; and the role, if any, that the BBC footage would play in that investigation. The Recorder therefore concluded that on the basis of the evidence presently before the court, he could not be satisfied that the condition of substantial value had been satisfied and refused the application.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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