COMMONWEALTH OF THE BAHAMAS **VBI No. 69/03/2021**

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

The Applicant

V

CARLINGTON BOWLEG

The Respondent

Before: **The Honorable Justice Dale Fitzpatrick**

Appearances: **Mr. Timothy Bailey for the Applicant**

Mr. Damien White for the Respondent

Heard on the Papers

Criminal Evidence (Witness Anonymity) Act 2011, Chapter 91B — Witness anonymity measures — Whether anonymity measures should be granted in respect of Witnesses Alpha and Beta — Identification Evidence - Evidence Act 2014, Chapter 65 — Evidence by live television link — Penal Code, Chapter 84, section 291(1) — Respondent charged with murder

DECISION

FITZPATRICK J

Introduction

[1.] The Applicant seeks an order permitting two intended witnesses, namely "Alpha" and "Beta" to provide their respective trial testimony anonymously pursuant to *Sections 11(1) and 12(1) of the Criminal Evidence (Witness Anonymity) Act 2011 Chapter 91B* (the "*Witness Anonymity Act***"** or the "*Act*").

[2.] The Applicant also seeks an order to permit both Alpha and Beta to testify anonymously by way of live television link pursuant to *Section 78b(1)(a -c) of the Evidence Act 2014 Chapter 65*.

[3.] The applications for anonymity and live television link shall together be referred to as the "Application".

The Background

[4.] The Respondent is charged with murder contrary to *section 291(1)(a) of the Penal Code, Chapter 84*. The Applicant alleges that, on 5th February 2021, the Respondent shot and killed Mr. Anthony Petit at Mr. Petit's residence on Barrack Street, Harbour Island, Eleuthera.

[5.] Witness Alpha provided an anonymous statement to the police dated 6th February, 2021 saying he/she saw the Respondent shoot Mr. Petit on February 5th. Witness Alpha described the Respondent as wearing all black clothing with a white tam on his head at the time of the shooting. Witness Alpha stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "everyone on this island…by their names, faces and by their nicknames", including the Respondent who he/she has known all his/her life. Witness Alpha also stated his/her knowledge that Mr. Petit and the Respondent were competitors in the illicit drug trade on the island.

[6.] Witness Alpha attended with the police on February 7th where he/she identified the Respondent from a twelve-man photo lineup as the person he/she saw shoot Mr. Petit.

[7.] In a further statement dated 21st October, 2025, Witness Alpha said that he/she feared for his/her life seeking to remain anonymous when giving his/her first statement and maintaining that he/she would give evidence at trial only if permitted to do so anonymously.

[8.] Witness Beta provided an anonymous statement dated 6th February 2021 saying that he/she saw Mr. Petit walk into the back yard of his residence. Witness Beta next heard gunshots coming from the direction of Mr. Petit's residence and subsequently saw the Respondent flee the area with a black gun in his hand. Witness Beat said that the Respondent wearing all black clothing with a white tam on his head. Witness Beta stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "most persons living on this island by names, faces or nicknames", including the Respondent who he/she has known "for a long time".

[9.] Witness Beta attended with the police on February 7th where he/she identified the Respondent from a twelve man photo lineup as the person he/she saw running away with a firearm after the gunshots.

[10.] In a further statement dated 30th October 2025, Witness Beta confirmed that he/she feared for his/her life seeking to remain anonymous when giving his/her first statement and maintaining that he/she would give evidence only if permitted to do so anonymously. Witness Beta attributed his/her fear owing to the small size of the island and his/her belief that the Respondent is a "dangerous" individual.

Analysis

[11.] In determining this issue, the Court is directed by sections 4, 11–14 and 16 of the *Witness Anonymity Act*.

[12.] Murder is a qualifying offence under Section 4. Section 11 sets out the measures available to the Court to protect a witness's identity and provides the basis for the relief sought by the Applicant. Section 12(2)(b) addresses the non-disclosure of information that could identify a witness.

[13.] Section 13 of the Act sets out the preconditions for making a Witness Anonymity Order. The Court must consider whether the proposed measures are necessary to protect the witnesses' safety or prevent real harm to the public interest; whether the Respondent would nevertheless receive a fair trial; and whether the witnesses' evidence is sufficiently important that their testimony is required in the interests of justice. In that assessment, the Court will consider the witnesses stated unwillingness to testify without the proposed measures, their asserted fear of death, injury or damage to property, and the alleged risk of harm to the public interest if they testify without an order.

[14.] Moreover, the Court must consider the following:

> (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 evidence comes to be assessed;
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> (c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;
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> (d) whether the witness's evidence could be properly tested, whether on grounds of credibility or otherwise, without his identity being disclosed;
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> (e) whether there is any reason to believe that the witness —
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> (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; and,
>
> (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

[15.] The process for receiving the testimony of an anonymous witness is now in place for the Supreme Court. The anonymous witness is secured in a room or building separate from the courtroom where the trial is being held. There are four monitors in the trial courtroom: one on the judge's bench, one placed in front of the jury box, one for prosecution counsel and one in the body of the courtroom. The judge, the jury and the prosecution are provided with noise cancelling headphones. The anonymous witness appears by video on the judge's, the jury's and prosecution counsel's monitor. The witness's identity remains anonymous. However, the jury, the judge and the prosecution see and hear the witness without any measures obscuring the witness's appearance or distorting the witness's voice. By contrast, the accused and defence counsel view the witness on a monitor situated in the body of the courtroom, through which the witness's appearance is obscured and voice distorted.

[16.] Much of the Respondent's objection to the Application focuses on the perceived unfairness of being unable to face his accuser if anonymity is granted. He argues that the right to face one's accuser is fundamental to his right to a fair trial enshrined in Article 20(2)(c) of the Constitution. This is a legitimate concern but it is not, in and of itself, determinative.

[17.] The Respondent specifically opposes complete concealment of a witness to the judge, jury and himself suggesting this would restrict the Respondent's ability to test and the jury's ability to assess the witnesses' evidence. Complete concealment is not the process followed for anonymous witness testimony in the Supreme Court, as described above.

[18.] The observations of Lord Bingham of Cornhill in *Steven Grant v The Queen [2006] UKPC 2* are instructive in response to the Respondent's objection. In that case, the Board considered a constitutional challenge to a Jamaican statutory regime providing for witness anonymity:

> "(14) The Board would not wish to question the general validity of the principle for which the appellant argues. The evidence of a witness given orally in person in court, an oath or affirmation, so that he may be cross-examined and his demeanor under interrogation evaluated by the tribunal of fact, has always been regarded as the best evidence, should continue to be so regarded. Any departure from that practice must be justified. But for a number or reasons, in large measure those advanced for the Attorney General and accepted by the Court of Appeal, the Board cannot conclude that section 31D of the Evidence Act is inconsistent with section 20(6)(d) of the Constitution."

> "(15) It is, first of all, clear that the constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional, and the burden on a party seeking to prove invalidity is a heavy one: *Mootoo v Attorney General of Trinidad and Tobago* [1979] 1 WLR 1334, 1338-1339. Thus the appellant has a difficult task."

[19.] Further, the mention of the Hansard note on the *Witness Anonymity Act* by Madame Justice Cheryl Grant-Thompson at paragraph 31 in *Bruce Colebrooke v The Director of Public Prosecutions [2025] BS 2025 SC 68* is also of assistance. Excerpts from the speech on the floor by then MP Desmond Bannister provides the legislative justification in support of the enactment of the *Witness Anonymity Act*:

> "Government takes the position today, sir, that we have a duty to do our best to protect witnesses who are brave enough to come forward to give evidence against murderers, drug dealers, human traffickers and other despicable criminals who would otherwise get away and return to our communities to do more harm…
>
> However, Mr. Speaker, we must try, and in this respect, I am comforted by the fact that section 13 of the Act outlines rigorous conditions and circumstances that must be complied with before a judge may make an order. So a judge can't just come out and decide to make an order like this. He has to comply with any number of conditions that have to be complied with….

[20.] The following observations of Lord Rodger of Earlsferry in *R v Davis [2008] UKHL 36* are expressed in vivid terms, but they underscore the importance of protecting witnesses. They also illuminate the tension between that objective and an accused person's right to confront those who give evidence against him:

> "(36) The intimidation of witnesses is an age-old and worldwide problem. When Cicero was intent on prosecuting Verres for his reign of terror in Sicily, highly-placed henchmen of Verres threatened "the fearful and oppressed Sicilian witnesses" with dire consequences if they gave evidence against him. Two thousand years later, still in Sicily, prosecutions of Mafia bosses have been bedeviled by the prevailing atmosphere of intimidation, with its insidious counterpart, the code of silence, omertà. The same goes for prosecutions of Camorra clan members in Campania and drug traffickers in Colombia. Hollywood has made everyone familiar with the problem of witness intimidation in the United States, whether today or in former times. For many years the wall of silence in London's East End frustrated attempts to prosecute the Kray Twins, until they were taken into custody in 1968 and people felt able to come forward to give evidence. In 1996 worries about the effects of witness intimidation led Strathclyde Police to introduce a Witness Protection Programme."

[21.] Witness tampering, intimidation, threats and actual violence against witnesses are matters of most grave concern. As the authorities cited above make clear, the vulnerability of witnesses is neither a novel nor a geographically isolated phenomenon; it is a longstanding and worldwide concern. The Bahamas is not immune to this reality. The prevalence of retaliatory conduct and gun violence directed at witnesses is a troubling and recurring feature of the criminal court landscape here. Measures that depart from the ordinary manner of giving evidence may be justified in a case where necessary to address this or any other demonstrated risk to witnesses

[22.] That Respondent's broader contention that the *Witness Anonymity Act* is unconstitutional is rejected.

[23.] The law is intended to protect vulnerable witnesses and facilitate their participation in the administration of justice, thereby ensuring that criminal allegations are determined on their merits rather than being frustrated by witness interference. More broadly, its serves to protect the public interest in the proper prosecution of criminal allegations.

[24.] The legislation is neither overbroad in its scope nor in the means adopted to achieve its objectives. There is a logical and rational connection between the harm sought to be prevented and the measures provided to address that harm. However, the means adopted cannot be disproportionate to the objective pursued. The Court, therefore, must undertake a balancing exercise weighing any adverse impact on the rights of the accused against the legitimate purpose of the legislation. In doing so, the Court must consider whether the measures adopted impair the rights of the accused no more than reasonably necessary to achieve that purpose.

[25.] The *Act* imposes conditions on the making of an anonymity order requiring the court to assess each application on its particular merits and to balance any demonstrated witness risks against the accused's right to a fair trial. This is a reasonable and measured response to the real risks facing witnesses in The Bahamas requiring a case by case balancing of the harm while balancing the impact on the accused.

[26.] Where the Court grants an order for witness anonymity, the impact on the accused's right to a fair trial is minimized by process for receiving the testimony of an anonymous witness now in place for the Supreme Court. The judge and the jury are able to see and hear the witness without alteration or obscuration, including during any cross-examination of the witness by the accused. Although the witness will be obscured to the accused, he will retain the full opportunity to cross-examine the witness.

[27.] It must be recognized that the right to a fair trial is not a consideration confined exclusively to the accused. The fairness of the trial process extends to all participants, including vulnerable witnesses, and must be considered in the broader public interest in the proper administration of justice.

[28.] For the reasons outlined above, the Court is satisfied that the *Act* strikes a constitutionally permissible balance between the protection of vulnerable witnesses, the interests of the accused

and the broader public interest in the administration of justice. Accordingly, both the measures provided under the *Act* and the process adopted by the Supreme Court are consistent with the constitutional guarantee of a fair trial.

[29.] The determination of the Application does not require a final assessment of the witnesses' credibility or the strength of their evidence. The *Act* does, however, require the Court to make a preliminary assessment of the significance of their proposed testimony.

[30.] The issue of the identification of the shooter is central in this case. Each of Alpha's and Beta's statements present evidence that is directly relevant to the identification issue.

[31.] Witness Alpha provided a statement to the police dated 6th February saying he/she saw the Respondent shoot Mr. Petit the day before on February 5th. Witness Alpha described the Respondent as wearing all black clothing with a white tam on his head at the time of the shooting. He/she described the conditions for his/her observations, namely that his/her observations were made from "not too far away" with the street lights on and without obstruction. Witness Alpha stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "everyone on this island…by their names, faces and by their nicknames", including the Respondent who he/she has known all his/her life and described as being tall, slim and dark.

[32.] Witness Beta provided a statement dated 6th February 2021 saying that he/she saw Mr. Petit walk into the back yard of his residence. Witness Beta next heard gunshots coming from the direction of Mr. Petit's residence and subsequently saw the Respondent flee the area with a black gun in his hand wearing all black clothing with a white tam on his head. He/she described the conditions for his/her observations, namely that his/her observations were made "not too far" from the events, without any obstruction and with the street lights having "the whole place light up". Witness Beta stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "most persons living on this island by names, faces or nicknames", including the Respondent who he/she has known "for a long time" and described as being about six feet tall, slim build and dark skin.

[33.] As the above demonstrates, each of witnesses Alpha's and Beta's statements present badges of reliability. Their respective statements record his/her direct observations of the person he/she says was the assailant the evening of February 5th, 2021, namely the Respondent. Each witness noted the conditions and opportunity for his/her observations. Each witness noted the same clothing worn by the assailant. Each witness noted the particulars of his/her prior knowledge of the Respondent. Based on all of these cumulative factors, he/she, unequivocally, identified the Respondent as the assailant in both his/her substantive statement detailing what he/she observed in relation to the shooting and his/her statement after viewing an identification parade two days after the shooting.

[34.] It is accepted that a prior criminal conviction is relevant to the trustworthiness of a witness.

[35.] Witness Alpha has eight (8) convictions over a span of twenty three (23) years with the last occurring more than four (4) years ago for relatively minor offences. None of Alpha's convictions resulted in a jail sentence. None of Alpha's convictions were for offences of dishonesty.

[36.] Witness Beta has nine (9) convictions over a span of nine (9) years with the last occurring more than seven (7) years ago for relatively minor offences. None of Beta's convictions resulted in a jail sentence. None of Beta's convictions were for offences of dishonesty.

[37.] The evidence on this Application on the issue of motive to fabricate is limited. There is no specific evidence on this Application regarding whether Witness Alpha or Witness Beta have any relationship history with the Respondent or other motive to provide false evidence in this matter. Each witness simply says they know the Respondent along with most of the other residents of their very small, island community where each has lived his/her entire life. Motive to fabricate is, of course, something that can be pursued by the Respondent in cross-examination.

[38.] The Court finds each that each of Witness Alpha and Witness Beta present reliable and highly probative proposed evidence on the central issue of identification connecting the Respondent to the allegations, if accepted by the jury.

[39.] The Court is directed by Section 13(2) of the *Act* to consider whether the requested anonymous testimony is necessary due to the witness having a "reasonable fear" of injury or death or serious damage to property if he/she were to testify without anonymity.

[40.] The Court has and relies upon the various statements provided by Witness Alpha and Witness Beta to the police in determining whether each has a reasonable fear to testify without anonymity.

[41.] Witness Alpha provided an anonymous statement to the police dated 6th February 2021 saying he/she saw the Respondent shoot Mr. Petit on February 5th. Witness Alpha stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "everyone on this island…by their names, faces and by their nicknames", including the Respondent who he/she has known all his/her life. Witness Alpha also stated his/her knowledge that Mr. Petit and the Respondent were competitors in the illicit drug trade on the island.

[42.] In a more recent statement dated 21st October, 2025, Witness Alpha said that he/she feared for his/her life seeking to remain anonymous when giving his/her first statement and maintaining that he/she would give evidence at trial only if permitted to do so anonymously.

[43.] It is reasonable to infer that Witness Alpha fears being physically harmed by the Respondent. This inference is supported by his/her stated observation of the Respondent shooting and killing Mr. Petit along with his/her belief that the Respondent is involved in the illicit drug trade, an enterprise which the Court recognizes is frequently associated with violence to protect products and territory. This inference is further strengthened with consideration to Witness Alpha's suggestion that the community where he/she and the Respondent reside is sufficiently small and

close-knit that its residents are generally known to one another. In these circumstances, it is reasonable to infer that Witness Alpha may perceive himself/herself as being particularly vulnerable to harm without anonymity.

[44.] Witness Beta provided an anonymous statement dated 6th February, 2021 saying that he/she saw the deceased, Mr. Petit walk into the back yard of his residence on February 5th. Witness Beta next heard gunshots coming from the direction of Mr. Petit's residence and subsequently saw the Respondent flee the area with a black gun in his hand. Witness Beta stated that he/she had lived in Eleuthera all of his/her life and thereby came to know "most persons living on this island by names, faces or nicknames", including the Respondent who he/she has known "for a long time".

[45.] In a more recent statement dated 30th October, 2025, Witness Beta confirmed that he/she feared for his/her life seeking to remain anonymous when giving his/her first statement and maintaining that he/she would give evidence only if permitted to do so anonymously. Witness Beta specifically noted his/her fear as owing to the small size of the island and his/her belief that the Respondent is a "dangerous" individual.

[46.] Given the above, the Court is satisfied that each of Witnesses Alpha and Witness Beta have a reasonable fear of injury or death if testifying without anonymity.

[47.] Section 13(1)(b) of the Act directs the Court to determine whether the Respondent would receive a fair trial if the proposed anonymity order were made. This question has been largely addressed above when the Court addressed the constitutionality of the *Act*.

[48.] There is no doubt that granting an order for a witness to testify anonymously impacts upon the accused's right to a fair trial. In such case, the accused is denied the opportunity to face his accuser in person in the courtroom, which has long been recognized as an important element of trial fairness and, normally, the preferred way of receiving evidence. However, the question is whether the accused will still have a fair trial where a witness(es) testifies anonymously.

[49.] As noted above, the impact on the accused's right to a fair trial is minimized by the process for receiving the testimony of an anonymous witness now in place for the Supreme Court. The judge and the jury are able to see and hear the witness without alteration or obscuration, including during any cross-examination of the witness by the accused. Although the witness will be obscured to the accused, he will retain the full opportunity to cross-examine the witness. The Court is satisfied that this process strikes an appropriate balance between preserving the anonymity of the witness and safeguarding the Respondent's right to a fair trial.

[50.] Given that the process established in the Supreme Court for anonymous testimony by necessity requires the witness to appear by video, that part of the Application seeking an order for Witness Alpha and Witness Beta to have his/her evidence of Witness adduced by television link in accordance with Section 78B(1)(a-c) of the *Evidence Act* is, essentially, redundant.

[51.] The Court has granted that part of the Application seeking to have Witness Alpha and Witness Beta provide his/her testimony anonymously with the result that he/she will appear by video link. There is no practical difference whether Witness Alpha and Witness Beta are physically situated in New Providence or any other location for his/her video testimony, so long as the necessary facilities and resources are available. The Applicant has made a commitment to this Court that facilities for the conducting of the television link within the parameters set forth in the *Evidence Act* will be provided.

[52.] The order permitting Witness Alpha and Witness Beta to provide his/her testimony by television link in accordance with Section 78B(1)(a-c) of the *Evidence Act* is, by necessity and in the interests of justice, granted.

Disposition

[53.] The Application seeking permission for Witnesses Alpha and Witness Beta to testify anonymously at trial under the *Witness Anonymity Act* and following the process adopted by the Supreme Court for anonymous testimony outlined in the body of this decision is granted.

[54.] The Application seeking permission for Witnesses Alpha and Witness Beta to give evidence by live television link pursuant to section 78B(2) of the *Evidence Act* is granted being necessary to the process adopted by the Supreme Court for anonymous testimony outlined in the body of this decision and in the interests of justice.

Dated 6th November, 2026

Fitzpatrick J