COMMONWEALTH OF THE BAHAMAS **2020**

IN THE SUPREME COURT **CRI/con/0004/**

CRIMINAL DIVISION

Constitutional Side

IN THE MATTER of Article 20(1) of the Constitution of
The Commonwealth of The Bahamas

Between

BRIAN WELLS SANDS

Applicant

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**

Appearances: **Mr. Lessiah Rolle- Counsel for the Applicant**
Ms. Destiny McKinney - Counsel for the Respondent

Date of Hearing: **7th October, 2020 & 31st March, 2021.**

DECISION ON CONSTITUTIONAL APPLICATION- ARSON
APPLICATION TO STAY THE PROSECUTION

GRANT-THOMPSON J

1. The Applicant claims that:

a) He failed to receive a fair trial within a reasonable time and that there has been "unreasonable delay" and seeks a Declaration in the result. The offence of Arson was allegedly committed on the 9 April, 2015- a delay of six (6) years by April 2021;

b) The Prosecution for Arson should be stayed and that the phone recording of the 22 February, 2020 be declared inadmissible;

c) The Notice of Motion dated and filed on the 29 June, 2020 should be granted, wherein the Applicant prayed for the following relief:

I. A Declaration that the Applicant has not been afforded a fair hearing within a reasonable time in contravention of Article 20 (1) of the Constitution of The Bahamas;

II. A Declaration that the Applicant cannot now be afforded a fair hearing in breach of Article 20 (1) of the Constitution;

III. An order staying the criminal prosecution against the Applicant;

IV. That the present information is an abuse of the process of the Court;

V. That the delay is Presumptively Prejudicial;

VI. That no reasonable explanation has been given for the delay; and

VII. That the Applicant has been severely prejudiced in his defense by reason of such delay.

2. **BACKGROUND**

i. A Constitutional Motion and supporting Affidavit were formalized and filed on behalf of the Applicant on the 29 June, 2020 wherein, the Applicant raised a constitutional Motion seeking relief for the alleged violation of his constitutional rights to a fair trial within a reasonable time pursuant to Article 20 (1) of the Constitution.

3. **DELAY & FAIR TRIAL WITHIN A REASONABLE TIME**

In **Bell v DPP [1985]1** AC the four (4) issues for the Court to consider have been set out by the Privy Council as outlined in the case of **Barker v Wingo 919720 US 514:**

> *"…the authorities are quite clear on the approach the Courts must take in an enquiry. There must be sought an element of what is described as presumptive prejudice, not necessarily actual, and which is caused by an infringement on the right to a fair trial within a reasonable time. The Court must have regard to length of delay, the reasons given by the prosecution for the delay, efforts made by the accused to assert his right and finally the prejudice to the Applicant."*

The Applicant alleges that since the 9 April, 2015 to the present date, more than six (6) years have elapsed without him being tried for the alleged Arson.

4. **BRIEF HISTORY OF CRIMINAL PROCEEDINGS** in the case:

i. The Appellant was arrested on 27 May, 2015 and rearrested on the 6 April, 2017. He is a thirty seven (37) year old Bahamian citizen;

ii. He was charged with Arson, the Respondent alleges that he intentionally and unlawfully caused Arnold Brown 's dwelling home to be set on fire on the 9 April, 2015;

iii. On 27th May, 2015, 1587 Philip Deveaux arrested, cautioned and charged him with Arson, contrary to Section 323 of the Penal Code, Chapter 84, after his rearrested on 6 April, 2017;

iv. He was granted bail after being interviewed by 2328 Stubbs at CDU. However, he was rearrested and the same officer interviewed him again. He was arraigned in the Supreme Court on 21 July, 2017 and pleaded Not Guilty;

v. The case was set down for trial in the Supreme Court on the 5th May, 2020 but had to be vacated due to the "COVID-19" pandemic;

vi. The Applicant seeks to have the phone recording by the virtual complainant on the 22 February 2016 be declared inadmissible; and

vii. The Applicant filed a Constitutional Motion on the 29 June, 2020 where he claims a violation of his Article 20(1) constitutional right to have a fair trial in a reasonable time.

WHAT IS A REASONABLE TIME?

5. Although the Constitution does not stipulate what constitutes **'a reasonable time'**, the **Bail (Amendment) Act 2011, Section (2A) (a) and (b),** provides a guidance as to what Parliament considered to be a reasonable time as provided therein , a period of three (3) years was deemed reasonable. The Applicant avers that the delay was not caused by anything done by him, but rather by the failure of the prosecution to prosecute the matter within a reasonable time as guaranteed by Article 20 (1) of the Constitution. The Applicant submitted that this period of delay has resulted in severe prejudice to him, and him having a fair trial. The Prosecution countered that the Applicant has failed to advance any circumstances which

resulted in delay which might prejudice his defence. However, he alleges that on the 22 February, 2016, the Virtual Complainant recorded published and revealed a private conversation he had with her- without his consent. The Applicant says the Virtual Complainant plied him with alcohol- made him intoxicated, then in an inebriated state, and under duress, the Virtual Complainant threatened him by saying, " you was more scared of him than my nephews...I could have gone to their old man...and he would say that straight- don't worry about that," And, the Virtual Complainant reminded the Applicant that he had spent time in jail.

6. In the result the Applicant also seeks to have the phone recording expunged from the proceedings and declared inadmissible by the Honourable Court prior to his trial- if such trial is to commence having regard to the current application. The Applicant now claims that his Constitutional rights to a fair trial within a reasonable time have been breached and the only proper remedy is to stay the prosecution of this matter.

7. The Applicant submitted that there has been an inordinate and inexcusable delay since April 2015 in bringing him to trial in violation of his Article 20 (1) rights and that in the result he has been seriously prejudiced in his personal and family life.

8. In **Mervin Smith v Attorney General** the Court at paragraph 7 on the issue of delay, referenced Barker v Wingo:

> ***"…Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to a speedy trial, the length of delay that will provoke such an inquiry***

is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."

9. The Applicant claims to have been proactive in having his case brought to trial. The Crown says he has been on bail since his original arrest on the 27 May, 2015. That period is not unreasonable in light of the number of matters before the Courts of The Bahamas. The loss of Court time due to "COVID-19" has further exacerbated matters. These latter reasons cannot be laid at the feet of the Crown nor the Applicant.

PREJUDICE/PERSONAL CIRCUMSTANCES/FAMILY/WORK/INCARCERATION

10. The breach of the Applicant's Article 20(1) rights to a fair trial within a reasonable time is referred to in his Affidavit:

The Applicant has not specifically relied on any of the factors enunciated and identified in **Baker v Wingo which provides as follows**:

"…Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests:

(i) to prevent oppressive pretrial incarceration;

(ii) to minimize anxiety and concern of the accused; and

(iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant to adequately to prepare his case shows the fairness

> ***of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record, because what has been forgotten can rarely be shown."***

The Applicant failed to show how he has been prejudiced and consequently denied the Applicant his fundamental right of a fair trial which is the cornerstone of justice in any criminal trial.

11. In reaching a decision on the Applicant's constitutional motion, the Court must balance the fundamental right of the individual to a fair trial within 'a reasonable time' against the public interest in the attainment of justice. In **Mervin Smith v Attorney General, paragraph 21**, the Court referred to the dicta of Thorne, J in **R v Craig Nigel Higgs and Everett Russell** in considering a delay of some four years:

> ***"… I am satisfied that the delay in this case was longer than can be justified, particularly in light of the causes of the delay…and in referencing the Askov's case therein further stated,***
> ***"…lengthy and avoidable delay caused entirely by the Crown's sloppiness or inattention or by unjustified delays in the legal system will frequently entitle an accused to the benefit of Section 11 (b)…"***
> ***There could be no greater frustration imaginable for innocent persons charged with an offence than to be denied the opportunity of demonstrating their innocence for an unconscionable time as a result of unreasonable delays in their trial. The time awaiting trial***

> ***must be exquisite agony for accused persons and their immediate family. It is a fundamental precept of our criminal law that every individual is presumed to be innocent until proven guilty. It follows that on the same level of importance, all accused persons, each one of whom is presumed to be innocent, should be given the opportunity to defend themselves against the charges they face and to have their name cleared and reputation re-established at the earliest possible time."***

This Applicant should be given his opportunity to defend himself, to have his proverbial "day in court." It has become far too common place to accept the expiration of a number of years awaiting trial to be reasonable within our criminal justice system. It should not be an inducement for the DPP's Department to rest on its laurels.

12. In relation to this position, the Respondent relied on the Court of Appeal of the Bahamas in the case of Stubbs v The Attorney General SCCrApp No. 53 of 2013, where it was stated at paragraph 38 that:

> ***"…any adjudicating body considering the grant of a permanent stay as a remedy for an alleged breach of Article 20(1) of the Bahamian Constitution must take into consideration 1. the period of time which has elapsed in the matter 2. the complexity of the case 3. the nature and extent of any delay instituted by the defendant and 4. the manner in which the case has been handled by the prosecuting, administrative and judicial authorities. These factors combined with the existence of any exceptional circumstances will determine whether the grant of a permanent stay is appropriate in the circumstances of a case."***

13. Further the case of **Boolell v State of Maurtius [2006] UKPC 46**, referred to the Jamaican appeal case of **Bell v Director of Public prosecutions [1985] 937**, where Lord Templeman said:

> ***"The courts seek to prevent the exploitation of rights conferred by the Constitution and to weight the rights of the accused to be tried against the public interest in ensuring that a trial should only take place when the guilt or innocence of the accused can be fairly established by all the relevant evidence. The Board will therefore be reluctant to disagree with the considered view of the Court of Appeal of Jamaica that the right of an accused to a fair hearing within a reasonable time has not been infringed."***

14. It was submitted that, in all the circumstances of this case, a stay should not be granted, as the Applicant has not proven any exceptional circumstances which would warrant this matter being stayed.

15. Justice in the case demands that this Honourable Court balance the right of the Applicant to a fair trial within a reasonable time against the right of society to ensure that those who may have committed serious offences against members of the society are called to account for their actions. The operative period of delay in bringing the case to trial has been long, but affected by a number of matters. The charge is serious, although I accept this is not a complex case involving a large number of witnesses and evidential issues. The Crown has provided some explanation and justification for the delay. I am concerned that the delay complained of by the Applicant has not caused him any undue prejudice notwithstanding that none was pleaded- he appears to be his own main witness.

However, I am of the view that this can be adequately addressed at trial.

16. I do not accept that the appropriate relief is to stay or dismiss the proceedings. I believe that there can still be a fair trial.

GENERAL SUBMISSIONS OF THE APPLICANT

17. The Applicant respectfully submitted that the constitutional issue seeks a Declaration that by reason of delay the Respondent has violated his right to hearing within a reasonable time- a right guaranteed by Article 20(1) of the Constitution which holds:

> ***"if any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law."***

As a result of paragraph 1 above, the prosecution of his trial for Arson will not be stayed. This redress stems from the Applicant's constitutional right under Article 28 (1) of the Constitution which holds:

> ***"If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is been of is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress."***

THE CASE FOR THE RESPONDENT

18. Where the Applicant alleges that there has been unreasonable delay in the prosecution of his case, the prosecution is required to explain the reason for the

delay. In determining this factor, the commencement of the period to be taken into account must be determined.

19. In the case of ***A.G. Reference (No. 2 of 2001) [2004] 2 AC, pp 90-91, paragraph 26 [TAB]*** it highlighted the Court's judgment in the case of **Eckle v Federal Republic of Germany 5 EHRR I, 27 paragraph 73** that the relevant period commences, ***"as soon as person is charged; this may occur on a date prior to the case coming before the trial Court, such as the date of arrest, or the date when the person concerned was officially notified that he would be prosecuted (served with a summons as a result of an information being laid)."***

20. It is to be noted that this offence was committed on 9 April, 2015 and on the 27 May, 2015; the Applicant was arrested and subsequently rearrested on the 6 April, 2017 and charged with the present offence. The relevant period therefore to be taken into account commenced from the last date giving a total period of delay of four (4) years from the last arrest and six (6) years from the alleged commission of the offence. The Respondent avers and respectfully submitted that the offence of Arson with which the Applicant is charged, is a very serious offence and that the public interest would not be satisfied, if the Court were to issue a stay of the proceedings at this stage. They too relied on Privy Council in the case of ***Bell v Director of Public Prosecutions and Another [1985] 1 AC 937[TAB2]*** which endorsed four factors the Courts should take into consideration.

21. The Respondent is holding that although the length of the delay was long, it was not an inordinate delay particularly as the Applicant has been on bail for the entire period and I note he does not claim pretrial incarceration, excessive anxiety nor any undue impairment of his defense. In assessing the totality of the progress

of this matter it was submitted that the period was not unreasonable in this jurisdiction in light of the number of matters before the Courts to be dealt with. A sentiment with which I agree in this case.

22. The reason given by the Prosecution: as noted by Powel J in the case of ***Baker v Wingo*,** page 531, he stated:

> ***"A deliberate attempt to delay the trial in order to hamper the defence should be weighted heavily against the government (prosecution)."***

23. The Respondent submitted that the matter was not inadvertently omitted. However, it should be noted that the Crown is prepared to immediately address this outstanding matter by having the matter set down for trial at the next available case management date as the Defendant has already been arraigned. They claim that there was no deliberate attempt to hamper the defence on the part of the Prosecution. The advent of the "COVID-19" pandemic was not the fault of either parties and on the date set for trial last year no criminal trials were being held. I determine that the Applicant can still have a fair trial.

HAS ACCUSED ASSERTED HIS RIGHTS

24. The responsibility of the accused for asserting his rights: Powell J continued in the case of ***Baker v Wingo***, page 531 that:

> ***"Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason***

for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial."

Our Applicant has asserted his rights.

25. Prejudice to the Accused: The Respondent insists that notwithstanding that the Applicant avers that the delay is prejudicial to him; he has not put before the Court how the delay is prejudicial to him. In the case of ***A.G. Reference No. 1 of 1999 [1992] QB 630[TAB 4],*** the Court held that the Applicant must show on a balance of probabilities that owing to the delay he will suffer some prejudice. This was further noted in the case of ***Bell v D.P.P, page 942***, that it is for the Applicant to advance any circumstances as a result of the delay which might prejudice his defence if he were to be tried. I agree, nothing was advanced before me relative to prejudice to the Applicant.

REMOVAL OF THE PHONE RECORDING FROM THE PROCEEDING

26. The Listening Device Act, Chapter 90 provides that:

10. (1) Where a private conversation has come to the knowledge of person as a result, direct or indirect, of the use of a listening device used in contravention of section 3 of this Act, evidence of that conversation may not be given by that person in any civil or criminal proceedings.

(2) Subsection (1) of this section shall not render inadmissible the evidence of a private conversation — (a) that has come to the knowledge of the person giving

evidence if a party to the conversation consents to that evidence being given; or (b) in any prosecution for an offence against this Act.

27. Under this provision the evidence is admissible if one party consents. The Virtual Complainant claimed impliedly that he consented to the release of the recording. The concerns of duress and intoxication, which the Applicant now raises, are in my view factors for consideration in the trial. If the evidence fails to come up to scratch, then the submission of No Case To Answer will succeed. If the matter goes beyond that stage and the No Case Submission is overruled then the weakness and deficiencies in the evidence will be properly highlighted to the jury in the summation, including reviewing the circumstances of how the Applicant is alleged to have made these offensive and incriminating statements on the phone Recording of the Virtual Complainant- was he deliberately intoxicated? entrapped? and/or under duress when he allegedly made these statements. These issues will be left to the jury's consideration.

THE VOICE RECORDED-ADMISSIONS

28. The Respondent submits that the Applicant was not threatened nor made to drink alcohol in order to say what he said. They also correctly submitted that the Applicant and the Complainant were speaking on even terms with each other. As outlined at paragraph 12 of **Jamal Glinton v R SCCrApp No. 113 of 2012,** the responses of an accused person in relation to an accusation are admissible, if the accusations are made by someone on even terms with the accused. They submitted further, that the recordings of the Applicant's admissions are admissible into evidence.

29. Furthermore, the Respondent submitted that a constitutional relief is not the appropriate remedy for the issue of admissibility of evidence. It was submitted that this Court can conduct a Voir Dire in relative to all the circumstances surrounding the recordings in order to determine their admissibility. Again, I agree this is a trial issue.

30. On this point the Respondent relied on the case of **Harrikissoon v Attorney General of Trinidad and Tobago [1980] PC App. No. 40 of 1977**, Lord Diplock said with reference to the provisions in the Trinidad and Tobago (Constitution) Order in Council 1962:

> ***"the notion that whenever there is a failure by an organ of the government of a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right of fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative actions. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of***

avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."

31. The Respondent humbly submitted that the Applicant's right under Article 20(1) of the Constitution has not been infringed. Further that, a constitutional redress is not the proper cause of action for disputing the admissibility of evidence. A position with which I agree.

STAY OF PROSECUTION

32. It was submitted that the Court should find that the four (4) year period waiting trial or six (6) year period from the date of the commission of the alleged offence did not amount to an inordinate delay. This is the remedy that the Applicant seeks. In my view, the remedy is excessive and harsh. To grant a stay would not be the appropriate remedy. According, to Justice John, JA in the Bahamas Court of Appeal decision of **Stephen Ronel Stubbs and The Attorney General SCCrApp No. 153 of 2013**, page 24, paragraph 38[TAB5], he noted that a Court in considering the grant of a permanent stay as a remedy for an alleged breach of the Article 20(1) of The Bahamas Constitution, must consider:

> ***"(1) the period of time which has elapsed in the matter; (2) the complexity of the case; (3) the nature and extent of any delay instituted by the defendant, and (4) the manner in which the case has been handled by the prosecuting, administrative and judicial authorities."***

This trial is not unduly complex. I find that the time has not been inordinately long under all of the circumstances.

33. However, it was agreed by Lord Carswell in the case of **Prakash v Boolell PC App. No. 39 of 2005) page 12-13 paragraph 31[TAB6]** by Lord Bingham in the case of A.G's reference No. 2 of 2001 [2003] UKHL 68 that even where there was a breach of an Applicant's rights under the Constitution, the appropriate remedy would not be to stay the proceedings as this arises in only exceptional circumstances. In fact it followed the position that even where there is an extreme delay, which in itself would not justify the remedy. Such a remedy should only be considered where the delay might cause a substantive prejudice. This position was upheld by the Court of Appeal case of **Stephen Stubbs v The Attorney General**. I agree with this position by the Crown.

34. In the case of ***A.G. Reference No. 1 of 1990[1992] QB 630, page 631*** it was stated that:

> ***"where even delay could be said to be unjustifiable, the imposition of a permanent stay was to the exception rather than the rule; and that even more rarely could a stay properly be imposed in the absence of fault on the part of the complainant or the prosecution and never where the delay was due to merely the complexity of the case or contributed to by the defendant's actions."***

It was submitted that there was no danger of the trial of the Applicant being unfair. It must always be remembered that permanent stays imposed on the ground of delay should only be employed in exceptional circumstances. The Applicant has not in my view provided the Court with any exceptional circumstances to justify a permanent stay. Therefore, I will dismiss his application.

CONSTITUTIONAL UNDERPINNINGS

35. Article 28 of the Constitution provides redress when an Applicant alleged a breach of a fundamental right. Article 28 states, inter alia:

> ***"28. (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.***
>
> ***(2). The Supreme Court shall have original jurisdiction-***
>
> ***(a). to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and***
>
> ***(b). to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:***
>
> ***Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned."***

36. I must be satisfied however that no adequate means of redress is or has been available to such persons before I can act pursuant to Article 28 because of the provision contained in Article 28(2).

37. I am satisfied that a means of redress is available to the Applicant in this case as demonstrated by the authorities dealing with the issue of delay in this and other jurisdictions. ***See for example DPP v Tokai [1996] A.C. 856 and Attorney General's Reference (No. 2 of 2001).***

38. The relief is the trial judge's ability to ameliorate the effects of the delay both by his summing up to the jury; and in his sentencing of the Applicant should the Applicant be convicted. However, is that an **"adequate"** relief under the Constitution when the facts of this case are considered?

The Applicant's complaint is grounded in Article 20 of the Constitution. That Article states, inter alia:

> ***"20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."***

39. The right to a trial within a reasonable time is amorphous but efforts have been made to crystallize it. In **Barker v Wingo (1972) 407 US 514 Powell, J** provided a useful formula for making a determination as to what constitutes a **"reasonable time"** that has afforded much guidance for subsequent courts to follow both in this jurisdiction and in others. Powell, J identified four factors to which the Court must give heed in deciding whether or not the right to a speedy trial has been breached. This matter has taken some time to come on for trial – the trial as stated above the offence allegedly was committed on 9th April, 2015.

40. In addressing the matter of the Sixth Amendment of the Constitution of the United States he observed that it provides that: 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury…' Powell, J pointed out (at page 522) that:-

> ***"…the right to speedy trial is a vaguer concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate…The amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried."***

DECISION

41. My decision is that:

I. this Honourable Court does have the jurisdiction to hear this matter;

II. Notwithstanding that there has been a breach of the relevant constitutional provisions for trial within a reasonable period of time, in my view the Applicant can still have a fair trial and in the result the prosecution will **not** be stayed. Notwithstanding the delay, I find reasonable explanations provided having regard to the exigencies of the criminal justice system of The Bahamas

III. the VBI discloses no material defect; and

IV. the delay such as does exist, has not been contributed to by either party as the trial date was delayed due to a halt to criminal trials, ordered by the Honourable Chief Justice as a result of the "COVID-19" pandemic, which is a matter of public health, safety and public interest. I am of the view that such prejudice can be cured by appropriate directions at trial both for the delay which has occurred and for the phone recording of the 22 February, 2016. I direct that an early trial date be set since the criminal trials have now hereby resumed by specific directions of the Honourable Chief Justice. There can be no further inordinate and unnecessary delay in this matter.

Dated this 26th day of May A.D., 2021.

The Honourable Madam Justice
Mrs. Cheryl Grant-Thompson