**COMMONWEALTH OF THE BAHAMAS VBI No. 167/6/2022**

**IN THE SUPREME COURT**

**CRIMINAL DIVISION**

**BETWEEN**

**ADRIAN PAUL GIBSON**

**RASHAE LENORA GIBSON**

**JOAN VERONICA KNOWLES**

**JEROME MISSICK**

**PEACHES FARQUHARSON**

**ELWOOD DONALDSON**

Applicants

**V**

**DIRECTOR OF PUBLIC PROSECUTIONS (“D.P.P.”)**

Respondents

BEFORE: **The Honourable Madam Justice Cheryl Grant-Thompson**

APPEARANCES: **Mr. Murrio Ducille KC along with Mr. Bryan Bastian- appearing for Mr. Adrian Gibson M.P., Ms. Joan Knowles, and Mr. Jerome Missick; Mr. Brian Dorsette previously appearing for Ms. Rashae Gibson; Ms. Christina Galanos- appearing for Ms. Rashae Gibson; Mr. Raphel Moxey- appearing for** **Ms. Peaches Farquharson;** **Mr. Ian Cargill along with Mr. Donald Saunders appearing for Mr. Elwood Donaldson- Counsel for the Applicants**

**Madam Director Ms. Cordell Frazier and Mrs. Karine MacVean of the Office of the Director of Public Prosecutions for the Respondents**

HEARING DATES: 27th April 2023; 8th May 2023; 15th May 2023

**DISCLOSURE OF EVIDENCE & HEARING OF VIRTUAL EVIDENCE JUDGMENT, Pursuant to s. 78B (1) (a) and (b) of the Evidence (Amendment) Act, 2014**

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**Headnote #1 Re: EVIDENCE BY WAY OF VIDEO LINK**.CRIMINAL LAW. This case concerns a Crown application which was initially pursuant to section 78B(1)(b) and (c) of the Evidence (Amendment) Act, 2011, but made later amended to Section 78B (1) (a) and (b) of the Evidence (Amendment) (No. 2) Act, 2014 seeking to adduce evidence in the criminal trial by way of live video television link of one named witness who was apprehensive of giving evidence in person due to fear of her life and severe personal prejudice thereby causing her distress. The Defence argued that the application would among other functions be a breach of the Constitutional rights of the accused persons. The Court had to consider whether the application should be granted. Any potential violation of the Constitutional rights of the accused persons was adjourned to a separate hearing and heard under an Original Notice of Motion alleging specific Constitutional breaches. This judgment is concerned solely with whether the evidence would be allowed by live video link. Ultimately, the Court ruled that the Crown’s application should be granted.

(1) The witness can be seen and heard which obliterates the possibility of prejudice to the accused; and

(2) the witness has satisfied the statutory criterion for the grant of such an application; and

(3) the realistic practicable concerns of considerable documentary exhibits to be shown to the witness should be technically provided for.

The Court considered *Kiarie v Secretary of State for the Home Department [2017] UKSC 42, The Director of Public Prosecutions v Stephano Curry VBI No. 97/5/2018 and A.G. v. Leroy Smith a.k.a. "Shaddy" and Tony Smith a.k.a. "Jamal" SCCrApp No. 95 of 2014; Director of Public Prosecution v Kelly 2006 3 Irish Reports 115;* *O'Callaghan v Judge Alan Mahon et al [2006] IR 32; Grant v The Queen 2007 1 Appeal case at 1*. The Constitution of the Commonwealth of The Bahamas.

**Headnote #2 Re: DISCOVERY IN A CRIMINAL TRIAL.** CRIMINAL LAW**.** The Applicants seeks an order that the Respondent (i) give particular discovery of all documents that are, or have been, in their possession, custody or power and which fall within the categories set out in the Defence Case Management Questionnaire for Disclosure. The Respondents object to such discovery and submit that the alleged documents which the Applicants seek have already been disclosed to them within a timely manner having regard to when same was requested. The Respondents submit that the current application should not be used as a “fishing expedition” to obtain evidentiary material for other extant proceedings. The Court considered *The State v. Paul (Michael) et al (1999) 57 W.I.R. 48; Williams & Pratt et Al BS 2006 SC 78; Mallard v. The Queen [2005] HCA 68; The Queen v David Shane Gibson BS 2019 SC 26; Berkeley Administration Inc. and McClelland 1990 FSR 381 at 382; Attorney General v. Sean Cartwright et al No. 8 of 2004;* and ruled thee discovery was adequate and proper as all of the twists and turns of a criminal investigation would not be expected to be disclosed. There was no reason established for the material requested.

**GRANT- THOMPSON, J**

1. The Applicant was arrested on the 26th day of May, 2022, questioned by the Criminal Investigation Department, later charged with the various offences under the Penal Code of The Bahamas, Chapter 84 and under the Prevention of Bribery Act, Chapter 88. The offences against all of the Defendants ranged from Making a False Declaration (1 Count), Conspiracy to Commit Bribery (10 Counts), Bribery (18 Counts), Conspiracy to Commit Fraud by False Pretences (8 Counts), Fraud by False Pretence (5 Counts), Receiving (21 Counts), Money Laundering (Acquisition) (5 Counts) and Money Laundering (30 Counts). Mr. Adrian Paul Gibson, an attorney and a sitting Member of Parliament for the constituency of Long Island, The Bahamas and the other Applicants who include Ms. Joan Veronica Knowles, and Mr. Jerome Missick were all respectively charged with various offences under the Penal Code Ch. 84 and the Prevention of Bribery Act, Ch. 88 ranging from Making a False Declaration (1 Count), Conspiracy to Commit Bribery (10 Counts), Bribery (18 Counts), Conspiracy to Commit Fraud by False Pretences (8 Counts), Fraud by False Pretence (5 Counts), Receiving (21 Counts), Money Laundering (Acquisition) (5 Counts) and Money Laundering (30 Counts).

**ISSUES**

1. Counsel for the Applicants made an application to this Court regarding three issues-;
   1. Whether there was adequate and proper Disclosure by the Prosecution to the Applicants;
   2. Whether there was proper and adequate Disclosure provided by the Prosecution within a reasonable time; and
   3. Whether the Applicants would be disadvantaged if a crucial prosecution witness, Ms. Alexandria Mackey, were allowed to appear and testify by live video feed.

**DISCLOSURE**

1. The issue of disclosure was raised by Mr. Murrio Ducille, KC (Counsel for the Applicants, namely Mr. Adrian Paul Gibson M.P., Ms. Joan Knowles and Mr. Jerome Missick). He asserted that the Prosecution has failed to provide full and frank disclosure in this matter.
2. Additionally, for the record it must be noted that Mr. Donald Saunders who was led by Mr. Ian Cargill (Counsel representing Mr. Elwood Donaldson) submitted during a pre-trial hearing (**page 3 at lines 8-9** of the transcript dated the 27th of April, 2023) (“the transcript”), that additional documents were required.
3. Crown Counsel refuted these submissions. The Director submitted that the audio and video recordings were disclosed. At **page 1 lines 20-23** of the transcript which provided that:-

“***My Lady, the Crown would have***

***provided the parties with audio and video cd's that the***

***Crown had in its possession. Anything that was not***

***served is not in the Crown's possession***”

In addition to this, Ms. Frazier assured the Court and asserted at **page 1 lines 26-30** of the transcript that:-

“***Everything requested by***

***Mr. Ducille KC was given to all the parties irrespective***

***of the fact that they had not requested it, my Lady.***

***So, the Crown would have provided all parties with the***

***documents requested by Mr. Ducille KC***”

1. Notwithstanding the DPP’s assertions, Counsel for the Applicants contend that they are dissatisfied with the extent of the documents supplied. They have thus applied for an Order for full and frank disclosure. In the transcript Mr. Murrio Ducille KC, provided oral submissions to the Court which asserted that the Applicants were not in receipt of key documents necessary for this matter. Counsel for the Applicants maintain that (in his oral submissions), there are a significant number of documents which are still outstanding and required in order to adequately prepare his defence.
2. In my years of experience involved in the conduct of criminal trials before the Court these issues are not novel. The Crown has a duty to disclose all of the ordinary material in their possession required for the trial. Some of the items requested were deemed extraordinary by the Crown. In the Courts view the Crown could not have foreseen that these items would be required until they were requested in the ordinary fashion during the Case Management hearings. In the view of the Court the Case Management Orders of the Court were not properly followed except by Mr. Raphael Moxey on behalf of his client, Ms. Peaches Farquharson. Mr. Saunders did not file in his Case Management Questionnaire until the Pre-Trial Review Hearing which was two working days before the trial was set to begin. This is unacceptable. He who comes to the Court seeking redress must come with clean hands. Case Management Orders of the Court within the Criminal Division should be strictly observed to precure fairness in the proceedings.

**SCOPE OF DISCLOSURE**

1. The Applicants sought the following:
   1. **Immunity/Plea/Deals/ Related Information** 
      1. Copy of the Court reporter’s transcript and/or notes of Magistrate Vogt- Evans from Magistrate Court hearing reference to Tanya Demeritte plea deal.
      2. Signed copy of Tanya Demeritte’s plea deal with DPP.
      3. Signed copy of Alexandria Claudia Mackey (ACM) immunity agreement with DPP dated around or on 28th July, 2022.
      4. Copy of Alexandria Mackey’s initial immunity agreement or deal with the Police/ then ACP Leamond Deleveaux, which prevented her from being charged.
      5. Copy of DPP Franklyn Williams plane ticket to Miami + hotel accommodations + rental car + itinerary + food to meet with Alexandria Mackey and sign immunity deal.
      6. Copy of plane ticket of attorney David Cash to Miami + hotel accommodations and rental car for the same meeting with Alexandria Mackey and Franklyn Williams to meet and sign immunity plea deal.
   2. **ALL Video and Audio Recordings**:
      1. Video & Audio of all police interviews of Rexville Pratt, particularly;
         1. 21st April, 2022 and 29th April, 2022
         2. And any others
      2. Video & Audio of all police interviews of Tanya Demeritte, namely:
         1. 20th April, 2022
         2. 5th May, 2022
         3. 21st July, 2022
      3. Video & Audio of all other interviews of Tanya Demeritte, pre-July 2022 Magistrate Court hearing
      4. Video & Audio of all police interviews of Alexandria Mackey, namely those dated:
         1. 28th April, 2022
         2. 29th April, 2022
         3. 28th June, 2022
         4. July, 2022, (all dates)
         5. 4th August, 2022
      5. Video & Audio of all other interviews of Alexandria Mackey prior to 28th July, 2022 immunity deal
      6. Video & Audio of all police interviews of Lanado Gibson.
      7. Video & Audio of police interview of Erno Bowe.
      8. Video & Audio of police interviews of Carl Oliver.
      9. Video & Audio of police interviews of Anthony Moxey.
      10. Video & Audio of police interviews of Dian Saunders.
      11. Video & Audio of police interviews of Carolyn Deanne Wallace-Whitfield.
      12. Video & Audio of police interviews of Dwayne Woods.
      13. Video & Audio of police interviews of John Bowleg.
      14. Video & Audio of all police interviews of Sylvanus Petty.
      15. Video & Audio of all police interviews of Robert Deal.
      16. Video & Audio of police interviews of Mynez Sherman.
      17. Video & Audio of all police interviews of Latoya Polacek.
      18. Video & Audio of all police interviews of Vaneke Johnson.
      19. Video & Audio of all police interviews of Ron Polacek.
      20. Video & Audio of all police interviews of Reshonta Moxey-Wilson.
      21. Video & Audio of police interviews of Deidre Taylor.
      22. Video & Audio of police interview of Bennet Minnie.
      23. Video & Audio of police interview of George Carey.
      24. Video & Audio of police interview of Nicolette Deandrea Dorsett.
      25. Video & Audio of police interviews of Sabrina Walkine.
      26. Video & Audio of police interviews of Clay Smith.

aa) Video and Audio of Christal Francis

bb) Video and Audio of Donathan Whylly

cc)Video & Audio of police interviews of Chelsa Fernandes

* 1. **Business Bank Statements** 
     1. Full bank statement of Elite Maintenance from 2018 to present date, namely Bank of Nova Scotia account # **50385-3334920**.
  2. **Alexandria Mackey’s Bank Statements:**
     1. Copies of any and all Alexandria Mackey bank statements between 2017 to 2022 from the below banks:

a. Bank of The Bahamas (BOB)

b. ~~FMB~~ FCIB

c. BNS **acct # 50385-3335299**

d. Commonwealth Bank (CB)2

e. RBC — **acct # 057757596182**

f. TSWCCU

* 1. **Water and Sewerage Corporation (WSC) Cheques and Wire Payments**:
     1. Copies of referenced Water and Sewerage Corporation cheques, per the charges:
        1. Cheque #207532 - $15,600
        2. Cheque #207699 - $5,075
        3. Cheque #208138 - $4,700
        4. Cheque #208713 - $4,700
        5. Cheque #208802 - $5,075
        6. Cheque #208853 - $750
        7. Cheque # 209448 - $5,075
        8. Cheque #209920 - $5,075
        9. Cheque #210457 - $2,537.50
        10. Cheque #210458 - $2,537.50
     2. Copies of WSC wires from WSC TO Elite Maintenance and Baha Maintenance and Restoration:
        1. **21 wire payments** totaling $111,683;
        2. **5 wire payments** totaling $538,660.08
        3. **4 wire payments** totaling $298,567.21
        4. **3 wire payments** totaling $251,686.40
        5. **4 wire payments** totaling $27,811
     3. Copies of all Purchase Orders related to works undertaken by:
        1. Elite Maintenance Limited since 2018;
        2. Baha Maintenance and Restoration since 2020;
        3. Adams Landscaping since 2018
     4. Official WSC Cheque Sign-out Roster reflecting ALL cheques (circa 2018 and 2019) collected by:
        1. Elite Maintenance and/or Alexandria Mackey and/or Tanya Demeritte and/or Rexville Pratt
  2. **Statements and Records of Interview** 
     1. Copy of the original, written complaint made to the police by Mr. Sylvanus Petty, MP/Chairman of WSC (to initiate investigation).
     2. Copy of the **Record of Interview** with Tanya Demeritte dated 20th April, 2022
     3. **Statement and Detention Record** of Tanya Demeritte dated 5th May, 2022
     4. Record of Interview of Tanya Demeritte dated 21st July, 2022.
     5. **Record of Interview** of Donathan Whylly.
     6. Statement of Donathan Whylly
     7. Statement of W/Sgt 3538 Rolle-Mackey (wife of Inspector Antoine Mackey)
     8. Record of Interview of Rexville Pratt dated 21st April, 2022 (as referenced in the statement of Inspector Cole brooke)
     9. Record of Interview of Robert Deal
     10. Record of Interview of Christal Francis
     11. Statement of Christal Francis
     12. **Record of Interview of Alexandria Mackey** relative to interview and typed statement conducted dated 29th April, 2022
     13. **Record of Interview of Alexandria Mackey** relative to typed statement dated 28th June, 2022
     14. **Record of Interview of Alexandria Mackey** relative to typed statement dated 4th August, 2022
     15. **Statement** of Deidre Taylor dated 25th April, 2022.
     16. **Record of Interview** of Deidre Taylor dated 31st May,2022.
     17. **Record of Interview** of Chelsa Fernander.
     18. **Record of Interview** of Ron Polacek
     19. Statement of Reshonta Moxey-Wilson
     20. Record of Interview of Lanado Gibson
     21. Record of Interview of Latoya Polacek
     22. Statement and or Report of Chief Superintendent Marion Fulford
     23. Record of Interview of Bennet Minnis
     24. Record of Interview of George Carey
     25. Record of Interview of Xavier Knowles.
     26. Written request from Leamond Deleveaux requesting documents from various financial institutions.
  3. **Documents** 
     1. Copy of 27th April, 2022 written request from Leamond Deleveaux requesting documents from various financial institutions
     2. Copy of the bundle (1) of documents handed to Inspector K. Colebrooke by Emrick Seymour on 9th May, 2022
     3. Copy of bundle (1) of documents handed to Inspector K. Colebrooke by Emrick Seymour on 16th May, 2022
     4. Copy of bundles (3) of documents handed to Inspector K. Colebrooke by Emrick Seymour on 18th May, 2022
     5. Copy of second set of documents (1 bundle) handed to Superintendent Bradley Pratt by Emrick Seymour on 18th May, 2022
     6. Copies of **ALL** memorandums from Leamond Deleveaux, as was referenced by Walton Winters in his statement and served on Walton Winters, Manager at Department of Inland Revenue
     7. **ALL** Outstanding documents from Department of Inland Revenue not yet disclosed.
     8. Copies of **ALL 3** memorandums sent to Lavado Duncanson, Acting Parliamentary Commissioner from DCP Leamond Deleveaux, beginning on 6th May, 2022 and on TWO other occasions as mentioned by Mr. Duncanson in his statement
     9. Copies of **ALL documents sent to ACP Deleveaux from the Parliamentary Commissioner**, resulting from correspondence sent on THREE separate occasions to Lavado Duncanson.
     10. Road Traffic Department Service record of Rex Adderley
     11. Copy of 26th April, 2022 memo served on Rex Adderley from Leamond Deleveaux and discloser dated the 25th of April and the 2nd of May 2022.
     12. Copy of the results/list submitted to Leamond Deleveaux from Rex Adderley, per his check of the RTD Transport Management System
     13. Copy of bundle sent by Asst Customs Comptroller Harold Fountain to Leamond Deleveaux reference 5 vehicles to Baha Maintenance and Restoration, 1 vehicle for Elite Maintenance and purportedly 20 imports for Mr. Adrian Gibson M.P,
     14. Copy of letter dated 11th May, 2022 from Leamond Deleveaux to Miles Parker
     15. Copies of TWO memoranda from Leamond Deleveaux to Registrar General Camille Gomez Jones dated 2nd May, 2022 and 9th May, 2022
  4. **WSC Information/ Documents:** 
     1. Copies of Dwayne Woods' reports from site inspections of tank refurbishment
     2. Copies of Chelsa Fernander reports from site inspections of tank refurbishment and WSC HQ painting
     3. Copies of **quotes** from (a) RL Pool and Hardscape and (b) Gunite Pools as was referred to by Chelsa Fernander in her 26th April, 2022 statement
     4. Copies of Donathan Whylly reports from site inspections
     5. Copies of Garvin McIntosh reports from site inspections
     6. Copies of purchase vouchers prepared by Engineering & Planning Department with attached invoices, per the statement of CFO Patrice Munroe
     7. Copies of all bids put before WSC Management and the Board of Directors concerning the 2020 tank refurbishments and WSC headquarters painting and renovation works.
  5. **Water and Sewerage Corporation** 
     1. Copies of the letters of acceptance issued to Elite Maintenance, Baha Maintenance and Restoration and Adams Landscaping, reference:

a. ALL (3) Blue Hills tanks and

b. ALL (2) Windsor tanks

* + 1. Copy of the letter of acceptance between Baha Maintenance and Restoration and WSC, ref WSC HQ painting and renovation works.
    2. Copy of the letter of acceptance between Elite Maintenance and WSC, ref WSC yard cleaning.
    3. PL99 forms or work order generated by Engineering and Planning and signed off for:

(a) WSC E. George Moss and Somerset House painting and renovations;

(b) Blue Hills Tanks refurbishment;

(c) Windsor Tanks refurbishment

* 1. **Police Detention Records** for:
     1. Complete detention records of Rexville Pratt
     2. Complete detention records of Lanado Gibson
     3. Complete detention records of Nicolette Dorsett
     4. Complete detention records of Erno Bowe
  2. **Court Orders/ Police Documents:**
     1. Copies of search warrants + Affidavits in support of search warrants on:
        1. Gibson's residence in Bunches, Long Island
        2. Adrian Gibson's residence in Nassau on 26th May, 2022 + Affidavit in support
        3. Search warrant for Catherine Gibson's residence and supporting affidavits
        4. Copy of search warrant and affidavit executed on WSC on 27th April, 2022
  3. **Digital files**:
     1. Copy of the request of Inspector Mackey ref data extraction from mobile phone of Mynez Sherman +
        1. Completed chain of custody +
        2. Copies of CD HTCC **#52624** - labelled Mynez Sherman with extracted information
     2. Copy of the request of Inspector Mackey ref data extraction from mobile phone of Mynez Sherman +
        1. Completed chain of custody +
        2. Copies of CD labelled HTCC **#52631** — labelled Mynez Sherman with extracted information along with witness information
     3. Copy of the request of Insp. Colebrook for extraction of data from the phone of Latoya Polacek showing:
        1. completed chain of custody +
        2. copies of extracted WhatsApp chats on storage device labelled CH HTCC #52600
     4. Copies of compact disc with digital images of:
        1. property on Farrington Road and Warren Street,
        2. property in Shirley Park and
        3. purported car keys — per D/Sgt 2914 Armbrister's statement dated 23rd May, 2022
     5. Copies of compact disc with digital images of:
        1. property in Venice Bay,
        2. Windsor Tanks and surrounding area,
        3. Tanks at Blue Hills,
        4. vehicles in Long Island,
        5. green house in Bunches, Long Island,
        6. property in Grays, Long Island,
        7. property in Buckley's, Long Island — per D/Sgt 2914 Armbrister's 16th May, 2022 statement
     6. Copy of the findings/analysis of:
        1. Silver HP laptop
        2. Black BLU mobile phone of Lanado Gibson
        3. Black HP Laptop of Adrian Gibson
        4. Copy of findings/ analysis off of black HP laptop of Adrian Gibson

**THE RESPONDENT’S RESPONSE**

1. The Respondent in support of its contention that they had provided all of the requested documents materially requested, concluded and Audit which revealed that:
   1. Copy of the Court reporter’s transcript and/or notes of Senior Magistrate Vogt-Evans from Magistrate Court hearing in reference to Tanya Demeritte’s Plea Deal- the Magistrate’s Court no longer have stenographers. Audio Recording not in Crown’s possession-This can be obtained by defence attorney;
   2. Signed copy of Tanya Demeritte’s Plea deal with DPP- Served on 19th April, 2023;
   3. Signed copy of Alexandria Claudia MacKey’s Immunity agreement- Served on 19th April, 2023;
   4. Signed copy of Alexandria Mackey’s initial immunity agreement or deal with the Police/then ACP Leamond Deleveaux, which prevented her from being charged- There was only one Immunity Agreement and that was served on defence on the 19th April, 2023;
   5. DPP Franklyn Williams plane ticket to Miami + hotel accommodations +rental car +itinerary + food to meet with Alexandria MacKey and sign immunity deal- Not served on defence because DPP Franklyn Williams did not travel to Miami;
   6. Copy of plane ticket of attorney David Cash to Miami + hotel accommodations and rental car for the same meeting with Alexandria MacKey and Franklyn Williams to meet and sign immunity plea deal- This item is not in the Crown’s possession- same can be requested by Defence from David Cash;
   7. Video & audio of all police interviews of Rexville Pratt, particularly; 21st April, 2022 and 29th April, 2022 and any others- Video & audio of Police Interview dated 21st April, 2022 served on 28th February, 2023. Additionally, the Crown is not in possession of any other video & audio police interview with respect to Rexville Pratt;
   8. Video & audio police interviews of Tanya Demeritte namely; 20th April, 2022, 5th April, 2022, 21st July, 2022- Video & audio of Police interview dated 20th April, 2022 was served on 3rd March, 2023. Additionally, Crown is not in possession of the video & audio dated 5th April, 2022 and the 21st July, 2022 (not recorded);
   9. Video & audio interview of Tanya Demeritte, pre-July 2022 Magistrate Court hearing- Crown is not in possession of this item;
   10. Video & audio police interview of Alexandria Mackey namely those dated: 28th April, 2022, 29th April, 2022, 28th June, 2022, all dates in July, 2022 and 4th August, 2022- Crown is not in possession of these items (All interviews were not recorded);
   11. Video & audio of all interviews of Alexandria Mackey prior to 28th July, 2022 Immunity Deal- Crown is not in possession of this item (Not recorded);
   12. Video & Audio of all Police interviews of Lanado Gibson- Crown is not in possession of this item (Not recorded);
   13. Video & audio of police interview of Erno Bowe; Served on 11th April, 2022;
   14. Video & audio of police interview of Anthony Moxey- Served on 11th April, 2022;
   15. Video & audio of police interview of Dian Saunders- Crown is not in possession of this item- (this witness gave an Audit Report);
   16. Video & audio of police interview of Carolyn Deanne Wallace-Whitfield- Crown is not in possession of this item- (Not Recorded);
   17. Video & audio of police interview of Dwayne Woods- Served on 11th April, 2022;
   18. Video & audio of police interview of John Bowleg- Crown is not in possession of this item (Not Recorded);
   19. Video & audio of police interview of Sylvanus Petty- Crown is not in possession of this item (Not Recorded);
   20. Video & audio of police interview of Robert Deal- Served on the 11th April, 2022;
   21. Video & audio of police interview of Mynez Sherman- Crown is not in possession of this item-(Not Recorded);
   22. Video & audio of police interview of Latoya Polacek- Served on the 11th April, 2022;
   23. Video & audio of police interview of Vaneke Johnson- Served on the 11th April, 2022;
   24. Video & audio of police interview of Ron Polacek- Served on 11th April, 2022;
   25. Video & audio of police interview of Reshonta Moxey-Wilson- Served on 11th April, 2022;
   26. Video & audio of police interview of Diedre Taylor- Served on 11th April, 2022;
   27. Video & audio of police interview of Bennet Minnis- Served on 11th April, 2022;
   28. Video & audio of police interview of George Carey- Served on 11th April, 2022;
   29. Video & audio of police interview of Nicolette Deandrea Dorsett- Served on the 11th April, 2022;
   30. Video & audio of police interview of Sabrina Walkine- Crown is not in possession of this item (Not Recorded);
   31. Video & audio of police interview of Clay Smith- Crown is not in possession of this item (Not Recorded);
   32. Video & audio of police interview of Christal Francis- Crown is not in possession of this item-(No statement was taken from this individual);
   33. Video & audio of police interview of Donathan Whylly- Crown is not in possession of this item (No statement was taken from this individual);
   34. Video & audio of police interview of Chelsa Fernander- Served on the 11th April, 2022;
   35. Full bank statement Elite Maintenance from 2018 to present date, namely Bank of Nova Scotia account#50385-3334920- All bank statements relative to Elite Maintenance has been disclosed and is contained in the three bundles provided. Crown is not in possession of any bank statements outside the relative period. Defendant Rashae Gibson is a signatory to Scotia Account #50385-3334920 and should be able to provide any further information;
   36. Copies of any and all Alexandria Mackey bank statement between 2017 to 2022 from BOB, FCIB, BNS-acct#50385-3335299, CB, RBC acct#057757596182, TSWCCU- Crown is not in possession of Alexandria Mackey’s personal bank statements listed under 8(a) through 8(f);
   37. Copies of referenced Water & Sewerage corporation cheques as listed in item #9- Served on the 28/3/23;
   38. Copies of WSC wires from WSC to Elite Maintenance and Baha maintenance and Restoration as listed in item #10- Served on the 28/3/23;
   39. Copies of all purchase orders related to works undertaken by Elite Maintenance Limited since 2018, Baha Maintenance and Restoration since 2020, Adams Landscaping since 2018- Served on 27th April, 2023 (Information is contained on a CD);
   40. Official WSC Cheque sign out roster reflecting all cheques collected Elite Maintenance/Alexandria Mackey/Tanya Demeritte or Rexville Pratt- Requested from WSC from the 11th March, 2023 and was advised WSC do not use a cheque sign out roster, vendors collecting cheques from accounts payable would sign on the related cheque;
   41. Statement and record of interview of Mr. Sylvanus Petty- Statement was served-in VBI bundle there was no ROI taken;
   42. Record of Interview of Tanya Demeritte dated 20th April, 2022- Served on 3rd March, 2023;
   43. Statement and Detention Record of Tanya Demeritte dated 5th May, 2022- Served on 3rd March, 2023;
   44. Record of Interview of Tanya Demeritte dated 21st July, 2022- Served- 28th February, 2023;
   45. Record of Interview Donathan Whylly- Crown not in possession of this item;
   46. Statement of Donathan Whylly- Crown not in possession of this item-No statement was taken from this individual (Name appears on site visit reports served);
   47. Statement of W/Sgt.3538 Rolle-Mackey- Crown not in possession of this item. W/Sgt. 3538 recorded witness statements;
   48. Record of Interview of Rexville Pratt dated 21st April, 2022- Served-3rd March, 2023;
   49. Record of interview of Robert Deal- Crown not in possession of this item- (A witness statement was recorded and served with VBI);
   50. Record of Interview of Christal Francis- Crown not in possession of this item-(this individual was not in custody);
   51. Statement of Christal Francis- Crown not in possession of this item-(no statement was taken from this individual);
   52. Record of Interview of Alexandria Mackey 29th April, 2022- Served 3rd March, 2023;
   53. Record of Interview of Alexandria Mackey dated 28th June, 2022- Served 3rd March, 2023;
   54. ROI Alexandria Mackey dated 4th August, 2022- Served 3rd March, 2023;
   55. Statement of Deidre Taylor dated 25th April, 2022- Served 3rd March, 2023;
   56. ROI Diedre Taylor dated 31st May, 2022- Served 3rd March, 2023;
   57. ROI Chelsa Fernander- Crown not in possession of this item-(this individual was not in police custody; witness statement recorded and served);
   58. ROI Ron Polacek- Crown not in possession of this item-(no record of interview was conducted only a statement which was served on 1st May, 2023- NOE);
   59. Statement of Reshonta Moxey-Wilson- Served 3rd March, 2023;
   60. ROI Lanado Gibson- Crown not in possession of this item (no record of interview was conducted only a statement);
   61. ROI Latoya Polacek- Crown not in possession of this item-(no record of interview was conducted, witness statement in VBI);
   62. Statement and Report of Chief Superintendent Marlon Fulford- Crown not in possession of this item;
   63. ROI Bennet Minnis- Served on 3rd March, 2023;
   64. ROI George Carey- Served on 3rd March, 2023;
   65. Copy of 27th April, 2022 written request from Leamond Deleveaux requesting documents from various financial institutions- Served on the 13th April, 2023;
   66. Copy of bundle of documents handed to inspector K. Colebrooke by Emrick Seymour on 9th May, 2022- Contained in bundle served with VBI- Crown has supplied an additional consolidate Bundle of Documents from banking institutions given to Emrick Seymour;
   67. Copy of bundle of documents handed to inspector K. Colebrooke by Emrick Seymour on 16th May, 2022- Contained in bundle served with VBI;
   68. Copy of (3) bundle of documents handed to inspector K. Colebrooke by Emrick Seymour on 18th May, 2022- Contained in bundle served with VBI;
   69. Copy of second set of documents handed to Superintendent Bradley Pratt by Emrick Seymour on 18th May, 2022- Contained in bundle served with VBI;
   70. Memorandums from Leamond Deleveaux referenced by Walton Winters in his statement- Served on 13th April, 2023;
   71. Outstanding documents from Department of Inland Revenue not yet disclosed- All documents from Inland Revenue in the Crown’s possession are in the bundle of documents;
   72. All 3 memos sent to Lavado Duncanson from DCP Leamond Deleveaux- Served on 13th April, 2023;
   73. All documents sent to ACP Deleveaux from Parliamentary Commissioner- Served -all documents are in VBI bundle;
   74. Road traffic department service record of Rex Adderley- Crown is not in possession of Rex Adderley’s personal service record (same may require Court order to his place of employment)
   75. Copy of 26th April, 2022 memo served on Rex Adderley from Leamond Deleveaux- Served on 13th April, 2023;
   76. Copy of result to Leamond Deleveaux from Rex Adderley, per his check of the RTD Transport Management System- Contained in bundle served on defence with VBI;
   77. Copy of bundle sent by Asst. Customs Comptroller Harold Fountain to Leamond Deleveaux- Contained in bundle served on defence with VBI;
   78. Copy of letter dated 11th May, 2022 from Leamond Deleveaux to Miles Parker- Served on the 28th April, 2023;
   79. Copy of memo from Leamond Deleveaux to Registrar General- Served on 13th April, 2023;
   80. Copy of Dwayne Wood’s report from site inspection of tank refurbishment- Served on 19th April, 2023;
   81. Copy of Chelsa Fernander report from site inspection of tank and WSC HQ painting- Served on 19th April, 2023;
   82. Copy of quotes from RL Pool and Hardscape and Gunite pool- Served on 19th April, 2023;
   83. Copy of Donathan Whylly report from site inspection- Served on 19th April, 2023;
   84. Copy of Garvin McIntosh report from site inspection- Served on 19th April, 2023;
   85. Copies of purchase vouchers prepared by Engineering & Planning Department with attached invoices per the statement of CFO Patrice Munroe- Served on 26th April, 2023 and a CD containing the same served on 27th April, 2023;
   86. Copies of all bids put before WSC Management and the Board of Directors concerning the 2020 tank refurbishments and WSC headquarters painting and renovation works- Crown is not in possession of any bids for the refurbishment of water tanks or painting of Headquarters as these works were allegedly done by Board directives;
   87. Copy of letter of acceptance to Elite Maintenance, Baha Maintenance and Adams Landscaping- Contained in Bundle of documents served with VBI;
   88. Copy of letter of acceptance between Elite Maintenance and WSC, ref WSC yard cleaning- WSC Ground Maintenance Agreements for Elite Maintenance (3) were served on 2nd May, 2023;
   89. PL99 forms or work order generated by Engineering and Planning and signed off for items listed in #63 (a-c)- Job Jackets by Engineering for Capital Works **M20565** & **M20567** served on the 19th April, 2023;
   90. Police detention record for items listed in #64 (a-d)- Crown is not in possession of these items (These persons were never in custody);
   91. Copy of search warrants and Affidavits in support on items listed in #65- Warrants served on the 6th April, 2023;
   92. Digital files of items listed in #66 (a-c)- HTCC 52624 extraction from mobile phone of Mynez Sherman & Consent/Chain of Custody form of Sgt. 2421 Pratt served on 2nd May, 2023 (Requested item b – c);
   93. Copy of the request of Inspector Mackey ref data extraction from mobile phone of Mynez Sherman as listed in item #67 (a-C)- HTCC 52631 extraction from mobile phone of Mynez Sherman (Request b - c);
   94. Copy of the request of Inspector Colebrook for extraction of data from the phone of Latoya Polacek as listed in item #68 (a-b)- HTCC 52600 (1) & HTCC 52600 (2) extraction of data from the phone of Latoya Polacek & Consent/Chain of Custody form of D/Cpl. 3912 Cadet served on 2nd May, 2023;
   95. Copies of compact disc with digital images of all items listed in #69 (a-c)- Served on the 12th April, 2023;
   96. Copies of compact disc with digital images of all items listed in #70 (a-g)- Served on defence on 12th April, 2023;
   97. Copy of the findings of all items listed in #71 (a-b) - Nothing was found;
   98. Copy of findings of black HP laptop of Adrian Gibson- Nothing was found.

1. In addition to providing the Court with an audited list of disclosure the Respondent at **page 22 lines 1-6** of the Transcript (of 27th day of April, 2023) also countered that possibly Counsel for the Applicants:-

“***perhaps did not have an opportunity to look at the***

***three bundles, that the Crown would have provided from***

***the presentation of the Voluntary Bill of Indictment but***

***there were a number of documents if they were given the***

***cursory view are contained in the bundles. The Inland***

***Revenue, the LOA's are all in the bundles***”.

1. And further at **pages 22** **lines 7-10** of the transcript that:-

“***At it relates to the plane ticket for***

***Mr. Williams who is now Justice Williams and that of***

***David Cash who was then the representor of the witness***

***Alexandria Mackey***.”

1. Furthermore, during the Prosecutions oral response to the failure to provide full and frank disclosure issue, it was also asserted at **pages 22** **lines 12-23** of the transcript that:-

“***We are under a duty, our obligations is to***

***provide documents that we intent to rely on and that***

***which is reasonably necessary for the defence. How a***

***plane ticket, how hotel accomodation for Mr. Franklyn***

***Williams which we can say on the record did not***

***travelled in respect to this matter. So, it's a fishing***

***expedition. And in relation to a number of documents***

***that was requested, we say it's a fishing expedition.***

***Not all of the witnesses who would have been arrested by***

***the police their interviews were recorded and that's why***

***the Crown would have indicated that we would turned over***

***all of the recordings in our possession***”

1. Moreover, on **pages 23 at lines 8-12 and 15-24** of the transcript, the Prosecution also stated that:-

***“… the Crown has***

***served on my learned friend both the immunity agreement***

***and the plea agreement of Tanya Demeritte and the***

***immunity agreement of Alexandria Mackey and the plea***

***agreement***.

***As it relates to Donathan Whylly's site***

***inspection reports, the Court as well as my learned***

***friend was handed a stack of site reports. And so a***

***cursory read of what documents are in their possession***

***and their understanding of the documents, will relieve***

***us of this issues that we now faced with. The Crown has***

***handed over all of the documents that we have in our***

***possession, that was requested. We do not have any***

***other documents, my Lady, that was requested in our***

***possession***”

1. In response to the Prosecutions claims, Mr. Ducille KC chided Crown Counsel and reminded them at **page 24 lines 8-11** of the transcript that:-

“***With the greatest of respect***

***to my learned friend. She cannot say what is pertinet***

***for the defence, what the defence will need, she cannot***

***say.”***

**APPLICABLE LAW**

1. There exists a general duty to disclose generally any information, in the possession of the Prosecution to the Defence under our criminal procedure and rules. It is trite law that the Prosecution has a duty to provide full and frank disclosure to their learned friends on the other side. This was shown in the case of **Williams & Pratt et Al** **BS 2006 SC 78**, at paragraph 45 where Sir Gummow, Hayne, Callinan and Heydon, JJ., in the case of ***Mallard v. The Queen***[***[2005] HCA 68***](https://justis.vlex.com/vid/793912517), was quoted:-

“***Disclosure of Crown Case***

***The Crown has a general duty to disclose the case in-chief for the prosecution to the defence.***

***Normally full disclosure of all relevant evidence will occur unless in exceptional circumstances full disclosure prior to the trial will undermine the administration of justice, or when such disclosure may endanger the life or safety of a witness.”***

1. The obligation on the Prosecution to make disclosure, however, does not include details of every twist and turn of an investigation, this was shown in the case of **The State v. Paul (Michael) et al (1999) 57 W.I.R. 48** where the headnote reads as follows:

“*The defence has no right to see material, which is available to the prosecution but unused, except where such disclosure is dictated on the ground and the defence can show that prejudice would result from nondisclosure. Nor is the prosecution under any consequential duty to preserve all material gathered in the course of an investigation, except to the extent that it would be unfair not to preserve unused material or where its non-disclosure would be an affront to the public conscience as undermining accepted standards of fairness*”

1. Moreover, in the aforementioned case it was also stated that:

“*The rationale for the requirement of disclosure is that an accused person ought not to suffer prejudice by being kept in ignorance of documentary material which may assist him in his defence. Fairness, therefore, which is said to be the key to the rules of disclosure would seem to require that material which the prosecution is under a duty to disclose, should be disclosed in indictable cases at or before the preliminary inquiry*”

1. Senior Justice Charles J states in the case of **The Queen v David Shane Gibson BS 2019 SC 26** at paragraphs 105-106 that:

“*105. The prosecution is under a duty to disclose as soon as is reasonably practicable all relevant material. The question of what material should be disclosed was considered in* ***Keane (1994) 99 Cr. App. R. 1.*** *The Court of Appeal said that the test of what was discloseable was to determine whether the material was relevant (or possibly relevant) to the issue in the case, or raised (or possibly raised) a new issue the existence of which was not apparent from the prosecution evidence, or held out a real prospect of providing a lead on evidence relevant to these matters.* ***If the prosecution was in doubt about the materiality of information the Court should be asked to rule***

*106. The principle establishes that it will be for the defence to establish why the material might be expected to assist them. The requirement that it might “reasonably be expected” to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure. On the other hand, if proper explanation of the relevance of the material and as to how it might assist is given, the Court will be under a duty to order disclosure in the interests of a fair trial.*”

1. I find helpful the ratio descendi of Mustill LJ in **Berkeley Administration Inc. and McClelland** **1990 FSR 381 at 382** where he opined**:**

“(*1) there is no jurisdiction to make an order for the production of documents unless… (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; and (c) there is sufficient evidence that the document is in the possession, custody or power of the other party.*

*(2) When it is established that those three prerequisites for jurisdiction do exist, the Court has a discretion whether or not to order disclosure*”

1. In the Supreme Court decision of **the Queen v. David Shane Gibson No. 233/10/2017** The Honourable Senior Justice Charles (as she then was) stated at paragraph 122 that:

“*In my opinion, every complaint the Defence makes can be dealt with in the ordinary course of his trial. In fact, the matters in dispute are all about the trial process. They have nothing to do with the fundamental right to a fair trial guaranteed by the Constitution which I shall consider momentarily. There is therefore no real basis for suggesting that the Applicant will not have a fair trial****”***

1. In the Court of Appeal decision of the **Attorney General v. Sean Cartwright et al No. 8 of 2004** the Court found *inter alia* that:

“*it was not* ***reasonably necessary******therefore, for copies of the audio tapes to be made in order to prepare a defence.*** *As to the videotapes, it is usual that photographs are given to defendants after they are exhibited in Court-either at the preliminary inquiry or trial and as Tolson’s case indicates, they are prima facie admissible**.* ***We do not think, therefore, that insisting on copies of the videotapes at this stage is “reasonably necessary” for the preparation of the defence***”

1. It was also asserted in the aforementioned Privy Council case of **Sean Cartwright** at paragraphs 108 that “*the obligation on the Prosecution to make disclosure… does not include details of every twist and turn of an investigation****.***”

**ANALYSIS**

1. The Prosecution wholeheartedly denies that they have failed to provide this Court and the other side with full and frank disclosure of the necessary documents. In response to this, the Applicants submitted that there are a number of substantive documents that have not been disclosed on them.
2. As shown in the case of ***Mallard v. The Queen*** it is understood that the Prosecution does in fact possess a duty to provide frank and full disclosure to the Defence. However, though it is accepted that the Prosecution does possess this duty, pursuant to the principle established within the case of **The State v. Paul (Michael),** it is also understood that the Defence is not entitled to unused materials of the prosecution where he cannot prove that it would result in prejudice to his client.
3. Within this matter the Prosecution asserts that they have provided Counsel for the Applicant with all the necessary documents within their possession, and the ones which were not provided were not in their possession. On the other hand, Counsel for the Applicant has asserted that for his client to receive a fair and just trial they must receive all of the documents they requested whether in the Prosecution’s possession or not. However, in asserting this Counsel for the Applicant has not provided this Court with any written or oral submissions which proves that their client would actually be prejudiced by the non-disclosure of certain documents. Thus, pursuant to the principle established in the case of **The Queen v David Shane Gibson,** it is the contention of this Court that the Prosecution has in fact discharged their duty to disclose, and Counsel for the Applicant would not be prejudiced by the late or non-disclosure of certain documents.
4. In addition to this, further guidance is once again taken from the case of **The Queen v David Shane Gibson** where the Court asserted that the Defence must in fact establish why the material might be expected to assist them. As stated in this case *“the requirement that it might “reasonably be expected” to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure.”*. This assertion further confirms the Court’s contention that the Defence would not be prejudiced in any way during this trial.
5. The Court also relies on the legal principle within the case of **Berkeley Administration Inc. and McClelland**, in considering whether the Prosecution has in fact provided full and frank disclosure. In this case it was stated that the Court cannot order disclosure of a document unless *“(a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; and (c) there is sufficient evidence that the document is in the possession, custody or power of the other party”*.
6. In relation to the previously listed prerequisites, the Prosecution has shown, through an audited list of disclosure provided to the Court, that they had in fact provided Counsel for the Applicant with all of the necessary information/ documents they had in their possession- the evidence which was not provided by the Crown was stated to have never been in the Crown’s possession. Counsel for the Applicant, though asserting that certain documents are in fact in the possession of the Prosecution, has failed to provide the Court with any substantial evidence proving the fact. As a result of this, it is reasonably asserted that would not be able to order disclosure on documents that do not exist.
7. It is also noted by this Court that the Applicant continues to assert that he needs to be provided with certain video and audio tapes in order for him to properly prepare his Defence. In light of this the Court adopts the words utter in the case of **Attorney General v. Sean Cartwright** which states that “*We do not think, therefore, that insisting on copies of the videotapes at this stage is “reasonably necessary” for the preparation of the defence*”

**Issue #2- Whether there was proper and adequate Disclosure provided by the Prosecution within a reasonable time?**

1. The second issue resolves around the question of “Whether there was adequate and proper Disclosure provided by the Prosecution within a reasonable time”;
2. According to the legal text of Halsbury's Laws of England (5th Edn) (2015) at paragraph 449[[1]](#footnote-1) it states that “*Where anything is limited to be done within a 'reasonable time' or at a 'reasonable hour', the question what is a reasonable time or reasonable hour must necessarily depend on the circumstances, and is therefore a question of fact.”*
3. Within this matter, as previously stated it is accepted that the Prosecution did in fact provide Counsel for the Applicant with the requested documents in a sporadic fashion. However, taking this into consideration it is a fact that the substantive trial for this matter has not begun as of yet. This is asserted to say that though the way in which Counsel for the Applicant received the documents was not ideal, it is the contention of this Court that the Applicant would have adequate time to prepare his Defence in this matter.

**Issue #3- Whether the Applicants would be disadvantaged if a crucial prosecution witness, Ms. Alexandria Mackey, were allowed to appear and testify by live video feed**?

1. Under this issue the Prosecution makes an application to this Court for the allowance of Witness Evidence to be adduced by way of Live Television link.

**The Prosecution’s Case**

1. On the 12th day of April 2023 the Prosecution filed a Notice of Application to adduce evidence by live television link. This Notice was supported by both an Affidavit filed on the 12th day of April 2023, and substantial submissions for leave.
2. Throughout these documents the Prosecution repeatedly asserts that:-
   1. Alexandria Mackey, one of the witnesses for the Respondent, currently resides outside of The Bahamas jurisdiction;
   2. The Respondent was informed by Alexandria Mackey and verily believe that she is available to give evidence in this matter when required by the Court;
   3. The witness is currently awaiting the determination of her I-485 Application to Register Permanent Residence and as a result cannot leave the United States without risk of being denied entry back into the country;
   4. The witness since leaving The Bahamas has gotten married to a US citizen and has recently given birth to a newborn child, which in the Respondent’s beliefs further complicates the witness’ ability to leave the United States to attend the Court in The Bahamas;
   5. If the witness is mandated to return to The Bahamas for these proceedings, it would result in undue hardship as this witness would be separated from her family;
   6. The Respondents verily believe that this witness is in fear for her life and that of her family;
   7. The witness and her family has been repeatedly harassed one of the Defendants in this case;
   8. If the application is acceded by this Court, the witness will give evidence from the office of The Bahamas Consulate General situated at 100 N Biscayne Blvd. Suite #900 Miami, FL 33132, United States of America.
   9. The Applicants will not be embarrassed in their Defence or prejudiced in any way if this witness was permitted to give her evidence via live television link, as she will be able to be examined by Crown Counsel, cross-examined by Counsel for the Respondents and re-examined.

**The Applicants Case:**

1. Counsel for the Applicant, namely Mr. Elwood Donaldson, submitted Skeleton Arguments which were accompanied by Affidavit evidence objecting to the Prosecution’s Application to adduce evidence by live television- link.
2. Throughout these documents Counsel for Mr. Donaldson asserted that:-
   1. The Witness’ grounds that she awaits determination of her I-485 application for United States of America Permanent Residency or Adjust Status therein resulting in her inability to travel out of that jurisdiction is unfounded;
   2. The Witness should have been aware of the necessity of her presence at the trial of this matter several months ago;
   3. The recent marriage of the Witness is of no real hindrance to her physical appearance at trial, as she and her husband should have had knowledge of this action, the importance of her appearance and participation in the trial before their marriage;
   4. The birth of the Witness’s child is of no real hindrance to her appearance at trial. There is no evidence to show that there are health implications resulting from her pregnancy or the delivery of the subject child that will hinder her appearance. Nor is there any evidence that there are health issues or traveling issues or restriction relating to the said child;
   5. There is no justifiable and substantial evidence before the Court to support her claim that her physical attendance will present undue hardship on herself or her family;
   6. There is no evidence before the Court to support the allegation made in the mentioned Affidavit against Mr. Adrian Paul Gibson M.P., a Defendant herein;
   7. They verily believe that Mr. Adrian Paul Gibson M.P., who is also an Attorney-at-Law and an Officer of the Honorable Court, is very well aware of his bail restrictions and that since the granting of his (and the other Defendant’s) bail in this matter, there have been no reports of any breach of same;
   8. The Defendant reserves the right to rely of additional grounds in support of his objection to the subject application, included, but not limited to, arguments on Constitutional Grounds.
3. In addition to the Applicants submissions which Counsel Mr. Ian Cargill adopted, he also provided oral submissions to the Court on the 10th day of May, 2023. These submissions are as follows;-
   1. That the Court in determining whether to allow the Prosecutions witness to give evidence by way of live television link, should not take into consideration the Covid 19 protocols. Counsel, Mr. Cargill asserted that this was because these practices and protocols were only relied upon during the “COVID-19” era when the Court was subject to certain restrictions, which have been since lifted;
   2. Counsel, Mr. Cargill submitted that during the “COVID-19” pandemic the Court only allowed persons to be seen and heard virtually in an attempt to stop the spread of the then dangerous and unpredictable virus, but this is no longer the case for the Courts. The Court accepts that the Director General of the World Health Organization (WHO) has declared the official end of the COVID-19 pandemic on the 5th May, 2023. The Court further accepts that Courts in The Bahamas have resumed functioning physically since the declaration made by the Chief Justice in his address during the opening of the legal year in January of 2023. However the law does allow for witnesses to be heard virtually in certain relevant circumstances pursuant to the Evidence (Amendment) Act 2014. The Court has so determined that this witness will be heard virtually;
   3. Counsel, Mr. Cargill asserted that the Affidavit of Counsel Perry McHardy on which Counsel for the Respondent seeks to rely is nothing more than documentary hearsay because Mr. McHardy is merely stating what someone told him. However the Court has accepted the evidence of Ms. Alexandria Mackey exhibited and referred to in the Affidavits of Counsel Perry McHardy and Chief Counsel T’Shura Ambrose;
   4. Counsel, Mr. Cargill asserted that the Prosecution witness should have provided both the Court and the other Attorneys in this matter with a copy of an Affidavit which was sworn by Ms. Alexandria Mackey, personally. The Court accepts that the witness in question in presently out of the jurisdiction and it may have been procedurally impractical for her to swear an Affidavit. In any event the evidence contained in the relevant Affidavits meet the requisite standard;
   5. It was also proposed by Counsel Mr. Cargill that if Counsel for the Respondents truly wanted to have the witness present for this matter they could have reached out to the United Stated (US) Embassy, request their witness’ presence at the trial, with no penalization relative to her during her citizenship application period. Ms. Alexandria Mackey resides in Orlando, Florida, United States of America and claims potential hardship if she were to leave before the determination of her application for permanent status in that country. Notwithstanding the submissions by Mr. Cargill, this Court cannot compel a foreign government on the manner in which they should conduct their affairs. The Court is therefore satisfied that in the interest of justice the evidence should be given by live television link;
   6. In addition, Mr. Cargill submitted that the Prosecutions witness claims that she is worried amongst other things about travelling to The Bahamas for the trial as it would result in her being away from her husband and child for an extended period of time. Mr. Cargill pointed out to the Court that the witness would rather drive 3+ hours from her residence to The Bahamas Consulate General in Maimi, than to take a 30-minute flight to The Bahamas for the trial and then return home after the day is completed to be with her loved ones. In the view of the Court this underscores the distress the witness allegedly feels in preferring to stay abroad and endure hardship in order to testify as opposed to being in the same room as the Applicant who she alleges induces fear and distress in her (See paragraph 49 of Affidavit of T’Shura Ambrose). On this note, if it is later determined that these side issues which currently ground this application are ruled relevant to the trial, the Jury will have to be expressly warned that there is no change before the Court of any unsavory domestic behavior relative to any of these Defendants- and that are not to be prejudiced against them in this regard, or at all;
   7. Counsel Mr. Raphael Moxey and Counsel Ms. Christina Galanos, both Counsel for the other Applicants adopted the submissions of both Mr. Cargill and Mr. Ducille, KC.
4. Though no formal submissions where given Mr. Murrio Ducille KC-Counsel for the Applicants, namely Mr. Adrian Gibson M.P., Ms. Joan Knowles and Mr. Jerome Missick- it must be noted that Mr. Murrio Ducille KC did in fact make an oral objection to the Application for the allowance of Witness Evidence to be adduced by way of video link, at **page 13 lines 25-26** of the transcript dated the 27th of April, 2023 (“the transcript”) that;

“***The first one an application***

***to adduced evidence by live television link that of***

***Mrs. Tanya Alexandria Mackey. That is told unacceptable***

***to us, as a matter of fact in relation to Mrs. Mackey, a***

***couple of issues will arise which I wish not to go into***

***at his stage. So, that is one of the problems***”

1. In addition to this, in Mr. Ducille’s oral submissions to the Court on the 27th of April, 2023 he further contends on **page 14 lines 3-6** of the transcript that:-

“***Well, she will be subjected***

***to certain things and that is why am saying that her***

***presence because submissions will arise in relation to***

***her***”

1. Mr. Ducille also asserts at **page 20 lines21-23** of the transcript that the presence of the Witness is of vital importance to the trial:

“***But the most***

***I can say is that Alexandria Mackey's presence is of***

***vital importance to the defence***”

1. Along with Mr. Ducille’s objection to the Prosecution’s application to have the witness evidence adduced by virtual link, Mr. Donald Saunders – Counsel for whom held brief for Mr. Ian Cargill, who represents Mr. Elwood Donaldson- also gave his oral objection.
2. On **page 25 lines 28- 32** and **page 26 lines 1-2** Mr. Saunders stated that:-

“***My Lady, while you waiting on***

***Mr. Saunders, I just want to formerly put on the record***

***on behalf of my client that we also object to this***

***application by the Crown. Specifically, my Lady, as it***

***relates to Section 73(c) and 78(b) -- specifically in…***

***regards to the interest of justice and operating***

***unfairly against the accused***”

1. Moreover, on **page 27 lines 10-17** of the transcript Mr. Saunders also submitted that:-

“***I would submit that that will be against there***

***our client if she knew, my Lady, that this matter was***

***set for a day why would she move and make an application***

***for permeant residency knowing that that would hinder***

***her coming to The Bahamas to give evidence. Not only***

***that, my Lady, she's the key witness for the prosecution***

***and we want this witness to be in this Court as my***

***client being face before this Judge and the jury***”

1. It must be noted that there was no formal or oral objection from Counsel representing the Applicants Ms. Rashae Gibson and Ms. Peaches Farquharson. However, in the Constitutional Application all submissions were adopted with approval.

**APPLICABLE LAW**

1. As of 20th day May 2022 Section 2(a) of the Evidence Act has been amended deleting the term “live television link” and replacing it with the phrase “video link”. Section 2(b) of the **Evidence (Amendment) Act, 2011** defines “video link” as;

“*by the insertion in the appropriate alphabetical order of the following new term and corresponding definition — video link" means a live television link, an internet link or any other arrangement that will allow the Court and any of the parties involved. inclusive of the accused. the witnesses, any legal representatives. any Court reporter and any interpreter or other person appointed to assist the accused or the witness, as the case may be, to engage in simultaneous visual and oral communication facilitated through the use of technology by the Court*.”

1. Section **78B** of the **Evidence (Amendment) Act, 2014** outlines how evidence can be ascertained by video link, by a witness in criminal proceedings;

“*(1) Subsections (1) and (2) of section 78B of the principal Act are repealed and replaced by the following-*

* + 1. *A person, other that the accused person, may give evidence by way of a live television link in proceedings to which this Part applies, where the evidence is essential to the case of the applicant and-* 
       - 1. *the witness is within or outside of The Bahamas;*
         2. *the quality of the evidence to be given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings;*
         3. *the witness is a child, elderly, ill or otherwise considered a vulnerable person; or*
         4. *the witness is to be cross examined following the admission of a video recording of testimony from him under section 78D*.

1. However, in addition to this Section **78B (2)** of the **Evidence (Amendment) Act, 2014** further outlines that;

“*Any evidence given pursuant to subsection (1) may not be given without the permission of the Court or upon the Court’s own motion and in either case the Court being satisfied that it is in the interest of justice that the evidence be given by a live television link.”*

1. Where the Court uses their discretion to grant leave for a witness to give evidence by way of video link, Part 1 of the Schedule of the **Evidence (Amendment) Act, 2011** labeled “Evidence by Video Link” further outlines procedure in which the Prosecution must follow;

“ 3. *Making an application for leave.*

*(l) A Court may, of its own motion, direct that a witness appear by way of video link.*

*(2) A party to a criminal proceeding who is desirous of the Court exercising its powers to give leave pursuant to section 78B(2) may make an oral application at any time during such proceedings to the trial judge where the application has become necessary by reason of circumstances beyond the control of, or the need could not have been reasonably foreseen by, the applicant*.”

1. Part 1 of the Schedule of the **Evidence (Amendment) Act, 2011** labeled “Evidence by Video Link” also outlines the content which must be contained within the application;

“*4. Content of application for a video link direction.*

*( l ) A party to a criminal proceeding who is desirous of adducing evidence by way of a video link must give to the Court his reasons for wishing to do so.*

* 1. *An applicant for a video link direction shall —*
     1. *unless the Court otherwise directs, identify the place from which the witness will give evidence;*
     2. *show to the Court that satisfactory arrangements have been made for efficiently carrying out the giving of evidence by video link;*
     3. *if the applicant wants the witness to be accompanied by another person while giving evidence, he shall — (i) name that person, if possible; and (ii) explain why it is appropriate for the witness to be accompanied*”

1. If the Prosecution asserts that they are relying on the grounds of fear and distress, the section **78B of the Evidence (Amendment) Act, 2014** also outlines what the Court must take into consideration;

*“(4A) Evidence of witness on grounds of fear and distress-*

*( l ) In determining whether a witness falls within section 78(B)(1)(b) the Court shall take into account in particular —*

* + 1. *the nature and alleged circumstances of the offence to which the proceedings relate;*
    2. *the age of the witness;*
    3. *such of the following matters as appear to the Court to be relevant namely —*
       1. *the social and cultural background and the ethnic origins of the witness;*
       2. *the domestic and employment circumstances of the witness; and*
       3. *any religious beliefs or political opinions of the witness;*

*(d) any aggressive or threatening behaviour towards the witness on the part of—*

*any party to the proceeding:*

* + - 1. *members of the family or associates of the accused; or*

*any other person who is likely to be an accused or a witness in the proceedings*

*(2)In determining the question in paragraph (I), the Court must in addition, consider any views expressed by the witness*”

**Common Law**

1. In the case of **Kiarie v Secretary of State for the Home Department** **[2017] UKSC 42** Lord Carnwath at paragraph 103 states that:-

“*I see no reason in principle why use of modern video facilities should not provide an effective means of providing oral evidence and participation from abroad, so long as the necessary facilities and resources are available****.***”

1. In addition to this in the Supreme Court decision of **The Director of Public Prosecutions v Stephano Curry VBI No. 97/5/2018** the Court at paragraph 63-64 stated:-

“*63. The Respondent’s right to a fair trial has not been forgotten. It is an absolute right and should never be fetterd. While an in person hearing has always been the preferred mode of giving evidence, the introduction of technology has provided for the introduction of a new facet to the right to a fair trial.*

*64. As previously stated, this facet has been tested and proven in a case involving the allegation of rape. Therefore, in consideration of both the Applicant’s and Respondent’s submissions, I find that it is fair and in the interest of justice and in conformity with the Respondent’s right to fair trial, to accede to the application to have Ms. Stromsnes and give her evidence by way of video link****.***”

1. In the Court of Appeal decision of **Attorney General v. Leroy Smith a.k.a. “Shaddy” and Tony Smith a.k.a. “Jamal” SCCApp. No. 95** **of 2014** at paragraph 30 Justice Adderley (as he then was) stated that:

“*Mr. Ducille’s construction of Article 20(2)(e) is misconceived, we agree with the view expressed by Ms. Dorsett that as a matter of ordinary construction, the words, “in person” in Article 20(2)(e) refers to the accused not the witness. The Article provides that the accused “in person” or “by his legal representative” must have an opportunity to examine the witness at trial*”

1. On the other hand, the Respondent relies on the judgment held in the case of **Director of Public Prosecution v Kelly 2006 3 Irish Reports 115** at paragraph 58 where it was stated that:

“*It is a proposition so obvious as scarcely to need your authority that the right to cross-examine ones accusers is fundamental to criminal procedures. It is axiomatic that every witness must submit himself to the rigors of cross-examination, having his evidence questioned, tested challenged and contradicted and his credit impeached. Cross-examination plays a pivotal role in all adversarial proceedings under the common law system*.”

1. The aforementioned case also mentioned at paragraph 78 and 79 that:

“*78. I believe that all of the authorities cited from all relevant jurisdictions demonstrate that there is an inescapable obligation on the Court to guarantee the overall fairness of the trial. I also believe that in all legal systems the right to cross-examine ones accusers is an essential element in a fair trial. This is not to say that restrictions may not be imposed in the interest of overall balance and the efficiency of the criminal justice system. While there maybe derogation for overriding reasons of public interest from normal procedural rights of an offence, there must not go beyond what is strictly necessary and must in no circumstances to use the language of Lord Bingham imperil the overall fairness of the trial****.***

***79****. I believe it that the claim of privilege made by the chief superintendent substituted an undoubted infringement of the normal right of the accused to have access to the material which underlay the belief expressed. To that extent it constituted a restriction on the effectiveness of the right of the appellant to cross-examine his true accusers and it had for that reason the potential for unfairness*”

1. Hardiman J in the Irish Supreme Court judgment of **O'Callaghan v Judge Alan Mahon et al [2006] IR 32** at page 55 at paragraph 42 states that:

“***T****he cross-examination of a witness on the basis of comparing what he has said under oath with an account given on another occasion is one of the longest established of the conventional methods of contradiction. It has been recognized for centuries. Section 23 and 24 of the Common Law Procedure Act 1854 provide as follows:*

*If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to him, to the witness, and he must be asked whether or not he has made such statement.*

*A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause without such writing being shown to him; but if it is intended to contradict such witness by the writing his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purposes of so contradicting him; provided always that it shall be competent for the judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of trial as he shall think fit.”*

1. Justice Hardiman in the same case at page 64 also states as follows:

“*The tribunal cannot simply come to a subjective decision of trust or lack of it in the notice party. It must give rational reasons for either giving or withholding belief in respect of the allegations which he made. Where the witness himself has admitted inconsistencies and omissions, it seems impossible to see how this could be done unless it is in a position to deal with those matters. And if it is to deal with them fairly, it must clearly hear the submissions of the lawyers for those impugned. These submissions, in turn, cannot be made unless the lawyers are aware of the inconsistencies and able to cross-examine on them. It is difficult to see what anyone whose concern is with the truth has to fear from the revelation.*

*It therefore appears to me that, in the context of Mr. Taylor's evidence there is clearly a significant and proper potential use for his previous statements in cross-examination. To deprive him of this potential would be to hamper and possibly to subvert his ability to cross-examine. There is nothing in the Constitution of a tribunal of inquiry, at which cross-examination must be permitted, to restrict the scope or methods of cross-examination beyond those restrictions which apply in other fora. Subject to the tribunal's argument based on confidentiality, which will be considered below, there is nothing which excludes the use of documentary records of previous statements which are in the possession of the tribunal from the scope of documents which may be used to contradict a witness. In this particular context, there is also the fact that very serious allegations have been sprung on Mr. O'Callaghan (and perhaps on the tribunal as well) without notice, but I do not regard this fact as a necessary ground of the decision****.”***

1. In the dicta of the Privy Council case of **Grant v The Queen 2007 1 Appeal** **case at 1** it was stated that:

“*Fairness in a trial requires a balancing act between the rights of the defendant and the interest of community and the victims of crime. In the words of Lord Philip in the case of R. B. Davis said as follows: 'Thus the right of the individual must be safeguarded but the interest of the community and the victims of crime must be respected*.”

**ANAYLSIS**

1. As outlined within section **78B (2)** of the **Evidence (Amendment) Act, 2011** before a witness can give evidence by way of video link in a criminal matter, they must first receive the permission of the Courts.
2. On the 12th of April 2023, the Prosecution filed a Notice of Application to Adduce Evidence by Live Television-Link, pursuant to section 78B (1)(b) and (c) of the Evidence (Amendment) Act 2011. This Notice was supported by an Affidavit in support also filed on the 12th of April 2023.
3. Following this, on the 27th of April, 2023 during a pretrial hearing the Prosecution made an oral submission to amend the aforementioned notice. On **page 24 lines 23-27** of the transcript Madam Director of Public Prosecution Ms. Frazier stated that:-

“***My Lady, what we***

***say, my Lady, have had filed the application in respect***

***of this matter and we seek to -- I know that we had 78***

***B&C, it should be A&B of the Evidence Amended Act #2 of***

***2014. And we seek to have that, my Lady, amended***”

1. The Court heard Ms. Frazier oral submission and granted the amendment to the Notice.
2. As a result of this, pursuant to the amended Notice, the Prosecution seeks to rely on the grounds that their witness is outside of the jurisdiction, and that the quality of the witnesses’ evidence is likely to be diminished by reason of fear or distress on the part of this witness connection with her testifying in these proceedings.
3. In regard to this Application, I verily believe that the Prosecution has correctly sought the permission of this Court through the appropriate means, as outlined in Part 1 of the Schedule of the **Evidence (Amendment) Act, 2011** labeled “Evidence by Video Link”. This is my contention because as previously stated the Prosecution has provided this Court with a valid Notice of Application and Affidavit in Support.
4. Moreover, this is also my contention due to the fact that the Prosecution has complied with the Part 1 of the Schedule of the **Evidence (Amendment) Act, 2011** labeled “Evidence by Video Link”, in regard to the content that should have been listed within the application.
5. As shown within their Affidavit in Support, the Prosecution has proved to this Court that there is a suitable place in which the witness intends to give evidence from-that being The Bahamas Consulate General situated at 100 N Biscayne Blvd. Suite #900 Miami, FL 33132, United States of America.
6. The Prosecution also stated within their Affidavit that Multimedia Technologies- a company which provides companies around the world with audio and video conferencing services- will be contracted by the Office of the Director of Public Prosecution, for the carriage of the matter.
7. As a result of this the Court is also satisfied that sufficient arrangements have been made for the efficient carriage of evidence by way of video link.
8. In addition to this, it must be noted that though Counsel for the Respondents have made oral objections to the Prosecutions application, I verily believe that their right to a fair trial would not be hindered in the allowance of the witnesses’ evidence to be adduced by virtual means.
9. Furthermore, having regard to the factors laid out within **78B of the Evidence (Amendment) Act 2014** it is also my contention that the Prosecution can in fact rely on the grounds of fear, as there exists a high possibility that the evidence of the witness may be diminished once she comes face to face with the Applicant.
10. The legal principle asserted in the case of **Kiarie v Secretary of State for the Home Department** is also accepted as there should be no reason why the use of modern video facilities should not provide an effective means of providing oral evidence and participation from abroad, so long as the necessary facilities and resources are available.
11. In addition to this, as shown in the case of **The Director of Public Prosecutions v Stephano Curry** though an in-person examination of a witness is normally the preferred way of receiving evidence, with the advancement of technology there now exists a new and reliable way to conduct a fair trial without the witness having to be present.
12. Further to this, the position held in the case of **Attorney General v. Leroy Smith** is also accepted. In this case the Courts ruled that where Article 20 (2)(e) of the Constitution of The Bahamas stated the words “in-person”, this was in reference to the accused being physically present and not the witness.
13. Lastly, in examining the principles laid out by the case of **DPP v Kelly** and **O'Callaghan v Judge Alan Mahon** it is understood that these precedents simply ensure that the accused’s right to cross-exam a witness is not infringed upon. Thus, it is submitted by this Court that if the Prosecution’s witness is allowed to adduce evidence by way of virtual means, the Applicant would in fact still be afforded a chance to cross-exam the witness. As a result of this, the Applicant’s right to a fair trial would not be infringed upon.
14. Therefore, I find that it is fair and in the interest of justice and in conformity with the Respondent’s right to fair trial, if the Prosecution’s witness’ were allowed to be called by way of video link.

**CONCLUSION**

1. I have determined that this is a proper case for the Court to exercise its discretion pursuant to section 78B (1) (a) and (b) of the Evidence (Amendment) Act and permit the witness to give evidence by way of live television link as the Court accepts that:-
   1. the named witness is located outside of the jurisdiction and is in fear for her life;
   2. the quality of evidence to be given by the named witnesses is likely to be diminished by reason of fear or distress;
   3. No breach of Constitutional rights of the accused;
   4. The trial would be fair;
   5. The facilities necessary for the television link are in place.
2. I provide to put my reasons in writing this I now do.

**Dated this 15th day of May A.D., 2023.**

**The Honourable Madam Justice Mrs. Cheryl Grant Thompson**

1. Volume 97 (2022)) > 2. Computation of Time > (7) Construction of Expressions Limiting Time > 449. Meaning of 'a reasonable time' [↑](#footnote-ref-1)