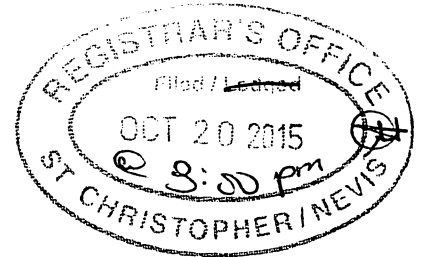


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CRIMINAL) AD 2015



Claim No: SKBHCR 2012/0054

Between: KEVIN ANDREW HORSTWOOD
And

DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

Respondent

NOTICE OF APPLICATION FOR DISCLOSURE

In his submission to chambers, dated 25th September 2015, the Applicant KEVIN ANDREW HORSTWOOD has raised issues of, 'Abuse of Process', denial of Constitutional rights and his desire for rightful access to precedent, so as to submit a Motion to quash the indictment, which he verily believes is invalid, all being detailed in the aforesaid submission.

Notwithstanding the above, the Applicant respectfully applies to this Honourable Court, for matters of Disclosure as follows:-

1. A ruling that LIME be permitted, in their capacity as suppliers, service operators, and service providers to

examine the two Blackberry cellphones supplied to the Applicant by LIME for his business, which have been recently 'disclosed' to the chambers of Mitcham and Benjamin, by the SKN police. Moreover that LIME be permitted to download all evidential details required by the Applicant for the preparation of his Defence. The Applicant was visited (after the said disclosure) by the chief Executive Officer of LIME, who readily agreed to undertake this matter, but who was then subsequently advised by the company's lawyer that the CEO should request that the Applicant get a direction of the Court before doing so. The Applicant would be grateful for the Court's assistance in providing this consent.

2. An Order for access, by a computer expert, in the presence of the Applicant, to the computer of the deceased, Mathew Murphy (hereinafter referred to as "MM") which was taken from the villa accommodation of MM by the SKN police (in the presence of the Applicant) on 30th December 2011. The Applicant requests that a copy of information on the hard drive of the said laptop is taken by the expert.
3. An Order for access by a computer expert, in the presence of the Applicant to the "police database" in this matter, as referred to on page two, line 36,

of the statement of PC562 Damien Challenger, and for a copy of relevant evidence on it, to be taken by the said expert, as required by the Applicant for the preparation of his Defence.

4. An Order for disclosure, of the cellphone records for 30th and 31st of December 2011, from the cellphone service provider, of then Insp' Charles Smithen, Cpl Morton and Insp' Henderson, including text and e-mail, to corroborate assertions given by them in Depositions.
5. An Order for disclosure, by LIME of the cellphone record of 660 6640, belonging to the deceased MM, including text and e-mail, from 26th December 2011 to date.
(The phone he carried has never been recovered)
6. An Order for disclosure, of copies of all photographs taken by PC562 Damien Challenger, at the cane field crime scene, on 30th December 2011, especially the general photographs of the overall crime scene, as well as the detail shots, and to include any photo's of foot prints leading to the crime scene. These should be on soft copy, to the original DPI definition of the camera.
7. An Order for disclosure, of a copy of all contemporaneous notes in this matter, made by PC 562 Damien Challenger

and also a copy of his scenes of crime report in this matter.

8. An Order for disclosure, of a copy of all contemporaneous notes made by Lt Ansell Alexander in this matter, and also a copy of his scenes of crime report in this matter.
9. An Order for disclosure, of a copy of all contemporaneous notes made by PC 633 Stevens in this matter.
10. An Order for disclosure, of a copy of the list of items taken by SKN police, from the cane field crime scene, and from the body of the deceased MM, together with a copy of the relevant 'Evidence Log' entry, as referred to on page two, line 34, of the statement of PC 562 Damien Challenger.
11. An Order for disclosure, of a copy of all forensic tests and resultant conclusion reports made pursuant to items taken from the cane field crime scene, and any forensic tests made at the cane field.
12. An Order for disclosure of the list of items taken from the villa accommodation of MM on 30th December 2011, together with a copy of the 'Evidence Log' entry for 30th December 2011, as referred to in the statement of PC 562 Damien Challenger, on page two, line 34.

13. An Order for disclosure, of the list of items taken from Rawlins Plantation on 1st January 2012, together with a copy of the 'Evidence Log' for 1st January 2012.
The reference to these items is made on page three, line 26, of the statement by PC562 Damien Challenger.
14. An Order for disclosure, of a copy of all photographs taken at the villa accommodation of the deceased MM, and also all photographs taken at Rawlins Plantation.
15. An Order for disclosure, of the list of items taken from the villa accommodation of the deceased MM, and from Rawlins Plantation, at any other dates, than on 30th and 31st December 2011, and 1st January 2012, together with a copy of the relevant 'Evidence Log' entry for such other dates.
16. An Order for disclosure, of a copy of forensic reports on items removed from Rawlins Plantation and from the Pajero vehicle belonging to the Applicant, as stated on page three, line 26 of the Statement of PC562 Damien Challenger.
17. An Order for disclosure, of a copy of any contemporaneous notes, and also the pursuant report, of the coroner, Ms Hill Hector, on, and after her visit to the canefield crime scene on 30th December 2011.

18. An Order for disclosure, of a copy of a statement giving the "highlights" in respect of the visit by Paul Bilzerian to Golden Lemon Inn, on 26th December 2011, which was requested by Insp' Smithen on 1st January 2012 and given to him by the Applicant.
19. An Order for disclosure, of a copy of the employment records of Insp' Charles Smithen, Cpl Morton and PC 405 Greg Glasgow, including records of complaints, (proven or not) made against them since their employment by SKN police.
20. An Order for disclosure, of full details and records surrounding the placing of Charles Smithen on, 'administrative leave' in or around 2004/2005, when evidence disappeared from the police Evidence Room, whilst Charles Smithen was in charge of it. Moreover, an Order for disclosure of police personnel records to show the reason for Charles Smithen's pursuant ejection from the CID department and his reassignment to other duties in a rural location.
21. An Order for disclosure, of the criminal record of two prosecution witnesses, namely Dale Bryan and Marty Carlota Francis.
22. An Order for disclosure, of a copy of the current

police, Internal Affairs, investigation and findings, in respect of events surrounding the disappearance of evidence from the police Evidence Room, namely the MacBook laptop belonging to the Applicant, which was confiscated from him, during the execution of a search warrant, of his accommodation and place of business, Rawlins Plantation, on 1st January 2012.

23. An Order for disclosure, of a copy of the conclusions of the police Internal Affairs department, and their pursuant recommendations for charges against the officers involved in the execution of the search warrant and the evident abuse of process, being Charles Smithen, Fitzroy Morton and Greg Glasgow.

A draft of the Order the Applicant seeks is attached.

The grounds of the Application are :-

1. The right of a Defendant to have access to unused material is inherent in the right to a fair trial.

In *Reg. v. Ward* [1993] 1 WLR 619, 645 F-H, Glidewell L.J., delivering the judgment of the Court, adopted the words of Lawton L.J. in *Reg. v. Hennessy (Timothy)* (1979) 68 Cr. App. R. 419, 426, where he said:

"those who prepare and conduct prosecutions owe a duty to the courts to ensure that all relevant evidence of help to an accused is either led by them or made available to the defence."

He went on to observe :

"We would emphasise that, 'all relevant evidence of help to the accused' is not limited to evidence which will obviously advance the accused's case. It is of help to the accused to have the opportunity of considering all the material evidence which the prosecution have gathered, and from which the prosecution have made their own selection of evidence to be led."

In the captioned matter herein, the material requested by the Applicant in paragraph numbers, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21, is extant evidence in the possession of the police, which they and the prosecution have chosen not to bring forward and lead with. Under the above authority of Glidewell L.J. the defence has a right to consider leading with it.

2. Defence to 'Abuse of Process'.

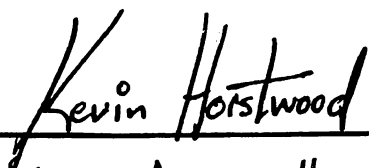
Clearly 'Abuse of Process' is already evident in this matter.

The admission, after three years of procrastination, by the SKN police, of the disappearance of key evidence from the police Evidence Room, and the non-compliance with a ruling by this Honourable Court for it to be released by the end of June 2015 is one example. However, this is only the tip of the iceberg. There is significant other 'Abuse of Process', including the fabrication of a statement by Charles Smithen. If that officer is not guilty of such abuse, then he (and the prosecution) should have no objection to providing the simple factual evidence requested in the Applicant's paragraphs, numbers 4, 19, 20, 22 and 23.

The Applicant seeks transparency from here onwards, to identify the perpetrators of the abuse and to ensure that any purported evidence is genuine.

An Affidavit in Support accompanies this Application.

Dated the 20th day of October 2015.



KEVIN ANDREW HORSTWOOD
Applicant.

NOTICE

This Application will be heard by the judge on the day
of 2015 at am/pm.

If you do not attend this hearing an Order may be made
in your absence.

N.B. This Notice of Application must be served as quickly
as possible on the Respondent to the Application.

The Court Office is at East Independence Square in the
town of Basseterre, in the island of Saint Christopher.

Telephone number 467-1335 / 465-2195, Fax 465-2482.

The office is open between 9.00 a.m and 3.30 p.m.

Mondays to Fridays, except public holidays.

THE EASTERN CARIBBEAN SUPREME COURT
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SAINT CHRISTOPHER CIRCUIT
(CRIMINAL) AD 2015

Claim No : SKBHCR 2012/0054

Between : KEVIN ANDREW HORSTWOOD
And

DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

Respondent

DRAFT ORDER

Before the Honourable Justice Marlene Carter.

Dated the day of 2015.
Entered the day of 2015.

UPON the Application of Kevin Andrew Horstwood, filed on the
day of October 2015, for disclosure, and upon reading
supporting documents,

AND UPON hearing from the Applicant and from the prosecution
in this matter :

IT IS HEREBY ORDERED THAT :-

1. The service provider LIME be permitted to examine two Blackberry telephones, disclosed to the chambers of the Law firm Mitcham and Benjamin, in the presence of the Applicant, and to download all evidential details required by the Applicant for the preparation of his defence.
2. There be access by a computer expert, nominated by the Applicant, to the laptop computer of the deceased Mathew Murphy, currently held by the SKN police, and that the said computer expert, in the presence of the Applicant, be permitted to download information from the said laptop for the preparation of the defence of the Applicant.
3. There be access by a computer expert, nominated by the Applicant, to the "police database" in this matter, and that the said computer expert, in the presence of the Applicant, be permitted to take a copy of information deemed helpful and necessary to the preparation of the defence of the Applicant.
4. The service provider for cellphone service, to Charles Smithen, Fitzroy Marton and Vaughn Henderson is to disclose a copy of their cellphone account for the

days of 30th and 31st December 2011, including text and e-mail communications.

5. The service provider LIME, is to disclose the call record of cellphone number 660 6640, belonging to the deceased Mathew Murphy, including text and e-mail, from 26th December 2011 to date.
6. All photographs taken by PC 562 Damien Challenger, at the cane field crime scene, on 30th December 2011, especially the general photographs of the overall crime scene, as well as the detail shots, and to include any photos of foot prints leading to the crime scene, be disclosed to the Defence on soft copy, to the original DPI definition of the camera.
7. All contemporaneous notes in this matter made by PC 562 Damien Challenger and also a copy of his scenes of crime report in the matter are to be disclosed to the Defence.
8. All contemporaneous notes in this matter, made by Lt Ansell Alexander and also a copy of his scenes of crime report in this matter are to be disclosed to the Defence.
9. All contemporaneous notes in this matter, made by PC

633 Stevens in this matter are to be disclosed to the Defence.

10. A list of items taken by SKN police, from the cane field crime scene, and from the body of the deceased Mathew Murphy, on 30th December 2011, is to be disclosed to the Defence, together with a copy of the 'Evidence Log' for 30th December 2011, as referred to by PC.562 Damien Challenger, in his statement in this matter.
11. A copy of all forensic tests and resultant conclusion reports, made pursuant to items taken from the cane field crime scene, on 30th December 2011, and any forensic tests made at the cane field is to be disclosed to the Defence.
12. A list of items taken from the villa accommodation of the deceased Mathew Murphy on 30th December 2011, together with a copy of the 'Evidence log' entry for the said items, is to be disclosed to the Defence.
13. A list of the items taken from Rawlins Plantation on 1st January 2012, together with a copy of the 'Evidence Log' for 1st January 2012 is to be disclosed to the Defence in this matter.

14. All photographs taken at the villa accommodation of the deceased Mathew Murphy, and also all photographs taken at Rawlins Plantation are to be disclosed to the Defence, on soft copy and to the DPI of the camera.
15. A list of items taken from the villa accommodation of the deceased Mathew Murphy, and from Rawlins Plantation, on any other dates, than on 30th and 31st December 2011, and 1st January 2012, together with a copy of the relevant 'Evidence Log' entry for such other dates, is to be disclosed to the Defence.
16. A copy of forensic reports on items removed from Rawlins Plantation and from the pajero vehicle belonging to the Applicant, is to be disclosed to the Defence.
17. A copy of any contemporaneous notes, and also the pursuant report, of the coroner, Ms Hill Hector, on, and after her visit to the canefield crime scene on 30th December 2011, is to be disclosed to the Defence.
18. A copy of a statement giving the "highlights" in respect of the visit by Paul Bilzerian to Golden Lemon Inn, on 26th December 2011, which was requested by

Insp' Smithen on 1st January 2012, and given to him then by the Applicant, is to be disclosed to the Defence.

19. A copy of the employment records of Insp' Charles Smithen, Cpl Fitzroy Mahton and PC 405 Greg Glasgow, including records of complaints, (Proven or not) made against them since their employment by SKN Police, is to be disclosed to the Defence.
20. Full details and written records surrounding the placing of Charles Smithen on, 'Administrative leave' in or around 2004/2005, when evidence disappeared from the police Evidence Room, whilst Charles Smithen was in charge of it, is to be disclosed to the Defence. Additionally, police personnel records to show the reason for Charles Smithen's pursuant ejection from the CID department and his reassignment to other duties in a rural location, are to be disclosed to the Defence.
21. The criminal records of two prosecution witnesses, namely Dale Bryon and Marty Carlota Francis are to be disclosed to the Defence.
22. A copy of the current police, Internal Affairs, investigation and findings, in respect of events surrounding the disappearance of evidence from the

police Evidence Room, namely the MacBook laptop belonging to the Applicant, is to be disclosed to the Defence.

23. A copy of the conclusions of the police Internal Affairs department, and their pursuant recommendations for charges against the officers involved in the execution of the search warrant at Rawlins Plantation on 1st January 2012 in the light of the 'Abuse of Process' is to be disclosed to the Defence.

BY ORDER OF THE COURT

REGISTRAR

THE EASTERN CARIBBEAN SUPREME COURT
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Claim No. SKBHCR 2012/0054

Between :

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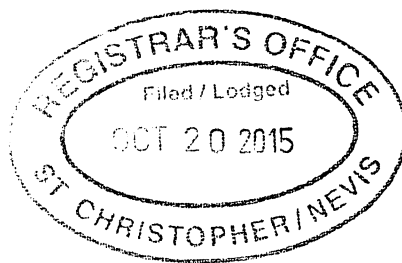
Applicant

And

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

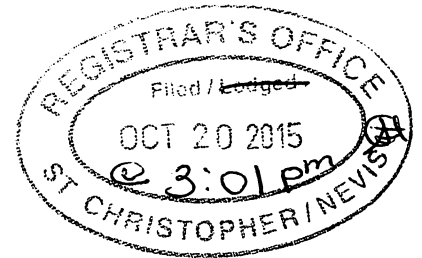
NOTICE OF APPLICATION FOR DISCLOSURE



Kevin Andrew Horstwood
HMP, Basseterre,
St Kitts, WI.

Filed on behalf of : Applicant
Deponent : K. Horstwood
Affidavit No : Fifth
Exhibits : None
Sworn : 20th Oct' 2015
Filed : 20th Oct' 2015

THE EASTERN CARIBBEAN SUPREME COURT
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AFFIDAVIT OF KEVIN ANDREW HORSTWOOD IN SUPPORT OF
APPLICATION FOR DISCLOSURE

I KEVIN ANDREW HORSTWOOD, of Rawlins Plantation, Mount Pleasant, in the island of Saint Christopher, but currently on remand at HMP, Cayon Street, Basseterre, St Kitts, MAKE OATH and say as follows:

1. I am a hotelier, the owner and operator of Rawlins Plantation Inn.
2. I am the Applicant herein.

3. I am charged with the crime of murder which I did not commit. I have been incarcerated on remand for more than three years and nine months.
4. I make this Affidavit in support of my Application for disclosure which accompanies this Affidavit, and also in support of my submission to chambers dated 25th September 2015.
5. My submission to chambers dated 25th September 2015, filed at the Court on 1st October 2015, states three key issues which are pivotal and causal to the fact that I have been incarcerated for nearly four years.

Issue One : ABUSE OF PROCESS

I give details in the said submission of the 'Abuse of Process' issues. I wish to submit a Motion for a stay, in the light of ongoing 'Abuse', however, due to the fact that my Constitutional rights are being denied (Issue Two) I have no means to study the appropriate legal procedures, and to research my position with respect to previous instances, so as to locate the proper format of such a Motion to file in Court.

Issue Two : DENIAL OF CONSTITUTIONAL RIGHTS

As stated previously to this Honourable Court, in my Affidavit

filed on 8th May 2015, and in my previous written submissions to Chambers filed on 9th January 2015, and on 10th February 2015, my Constitutional rights enshrined in Article 10, Part 2 (c) of the constitution, for, "adequate facilities to prepare my defence", are being denied by the prison.

I have an urgent need to read previous case law and to research matters appertaining to the police indictment. The said denial of access to, "adequate facilities" to do so, is compromising preparation of my defence and preventing me receiving a fair trial.

Issue Three: INVALID INDICTMENT

I give details in the aforesaid submission dated 25th September 2015, of my firm belief that my indictment is invalid. It is clear from legal information published by Dana S. Seetahal, and also from Section 84 of the SKN Evidence Act, that my indictment is invalid and that the Magistrate erred when I was indicted.

Section 84 of the SKN Evidence Act is solely procedural. It states that any alleged confession statement can only be entered into evidence at trial if accompanied by

a tape recording, or if was made in front of an independent person, "not being an investigating official". This procedure can not be complied with, by the prosecution, because the alleged statement is a total fabrication by the police, and was never given by me.

6. Notwithstanding the above three serious impediments to me receiving a fair trial, and in themselves, threats to the integrity of this Honourable Court, I have made Application for disclosure of evidence, which is in the possession of the police and which the prosecution has chosen not to lead with.
7. Under the authority of Glidewell L.J. in case, *Reg v Ward* [1993] 1 WLR 619, 645 F-H, which I sighted fully in my Application, I request that this Honourable Court grants disclosure of the extant evidence referred to in my Application paragraph numbers 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 21, be disclosed to me for the preparation of my defence.
8. In respect of paragraph number 4 of my Application for disclosure, I have requested release by the service provider, of a copy of the cellphone record of the key policemen in this matter, for just two days, (30th and 31st December 2011). This is to corroborate assertions made in Depositions made by them.

Being the subject of these Depositions, I know for a fact that there is untruthfulness in certain statements, and I seek to verify truth from untruth, in this matter.

Notwithstanding this legitimate reason of verifying assertions in Depositions, the disclosure is also requested in a matter which is already tainted by 'Abuse of Process' and which therefore gives extra cause to require absolute transparency.

9. In respect of my Application paragraphs 19 and 20, my request for disclosure of the employment record of the key two individuals in this matter, the request should be seen in the light of the fact that the only alleged evidence against me in this matter, is the word of one policeman and his accomplice. Their allegation is that I gave a confession statement, which I did not. It is therefore essential that the previous character of these two policemen is evidenced to the Court. It is the essence of this case.
10. In respect of paragraphs 22 and 23 of my Application for disclosure, I request disclosure of a known previous 'Abuse of Process' incident, involving the same key policeman. It is fundamental that the auspices and integrity of the Court should not be

compromised by policemen whose character is suspect or tainted. It is for this reason of protecting the integrity of the Court, that I request transparency in terms of disclosure of current and previous, investigations of 'Abuse of Process' by the particular policeman in this matter.

11. There is much case law on various aspects of the position that I find myself in. I have listed a small amount of cases to read for reference, in my aforesaid submission to chambers dated 25th September 2015, which I became aware of, from just two printed publications. It pains me greatly that my Constitutional rights are being denied to me, and so I can not research thoroughly the subject and issues. Simple access to information is surely a human right in my position.?

12. I am in the hands of the Court and I humbly ask the Court for guidance.

I make this Affidavit honestly and sincerely, knowing the contents to be true and correct to the best of my belief.

SWORN at the Registrars Office, Judicial)
and Legal Services Complex, Basseterre,)
St Kitts, this 20th day of October 2015)

Kevin Horstwood
KEVIN ANDREW HORSTWOOD

BEFORE ME :

Mr. Jose Lloyd
A COMMISSIONER OF OATHS

Filed on behalf of : Applicant
Deponent : K. Horstwood
Affidavit No : Fifth
Exhibits : None
Sworn : 20th Oct' 2015
Filed : 20th Oct' 2015

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HMP, Basseterre,
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