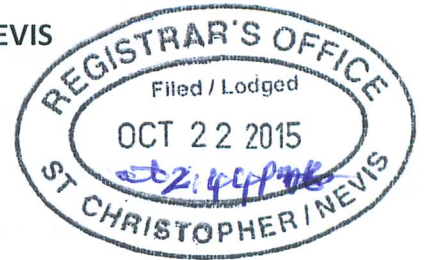


Respondent/D. Challenger/1st
"DC 1- DC 9"; 22-10-15/22-10-15

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(Criminal)**



Claim No. SKBHCR 2012/0054

Between:

KEVIN ANDREW HORSTWOOD

Applicant

-And-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

**AFFIDAVIT OF DAMIEN CHALLENGER IN RESPONSE TO THE APPLICATION FOR
DISCLOSURE**

I, Damien Challenger, Police Officer of Basseterre, St. Kitts hereby make oath and say as follows:

1. I am a Police Constable of the Royal St. Christopher and Nevis Police Force allotted Force Number 562 and attached to the Forensic Services Unit (FSU). I was the lead Officer of the FSU in this matter and I am duly authorised to make this Affidavit in Response to the Application for Disclosure filed by the Applicant herein on 20th October, 2015.
2. I make this Affidavit from information known to me personally unless otherwise expressly stated or from information given to me in which case I identify the source of my knowledge.
3. I have read the Notice of Application for Disclosure, Affidavit of Kevin Andrew Horstwood in Support of Application for Disclosure and Sixth Affidavit of Kevin Andrew Horstwood filed herein on 20th October, 2015.

4. I am advised by the Learned Acting Director of Public Prosecutions, Mr. Arudranauth Gossai and verily believe the following to be true:

- (i) On 23rd September, 2014 the Applicant was present before this Honourable Court wherein it was ordered that the Applicant be allowed to make telephone calls in order to retain an Attorney. The Applicant represented to the Court that the Deposition served on him was not a true reflection of what transpired at the Preliminary Inquiry (PI) and that he should be furnished with a copy of the transcripts of the PI. The Court thereupon informed the Applicant that there were no transcripts save for the Deposition. The matter was then adjourned for a trial date to be fixed.
- (ii) On 13th January, 2015 the Applicant appeared before this Honourable Court and made representation that he needed time to retain local counsel as he was unable to retain overseas counsel. The Applicant further represented that Learned Queen's Counsel Mr. James Woods may represent him providing that "*suitable*" local counsel is assigned. The Court instructed Prison Officer Mr. Liburd to assist the Applicant with telephone calls to local counsel. The matter was then adjourned.
- (iii) On 9th March, 2015 the Applicant again appeared before this Honourable Court and represented that he was unable to retain counsel and that he would represent himself in the matter. The Learned Judge informed the Applicant that the Court can appoint counsel but the Applicant indicated that he would represent himself as per his Constitutional Rights (section 10 of the Constitution). The matter was set for trial on 8th June, 2015. The Applicant requested disclosure in the matter and the Court ordered that the issue of disclosure be adjourned to 23rd March, 2015.

- (iv) On 23rd March, 2015 the Applicant sent a letter to the Office of the DPP requesting that certain information be disclosed. The matter came up before this Honourable Court on said 23rd March, 2015 and was adjourned to 31st March, 2015 to allow the DPP to respond to the written request for disclosure.
- (v) On 31st March, 2015 the DPP's Office informed the Court of the position of the Crown in relation to the written request for disclosure made by the Applicant on 23rd March, 2015. The Court thereupon ordered that the DPP's Office should file Affidavits setting out the Crown's position on the request for disclosure. The matter was thereupon adjourned to 11th May, 2015 for report.
- (vi) On 11th May, 2015 the Learned Judge was informed that the DPP's Office filed Affidavits of Mr. Franklin Dorset, Chief Prison Officer and Ms. Clauja Bradshaw, Magistrate's Court Clerk. The matter was then adjourned.
- (vii) On 8th June, 2015 the Crown informed the Court that cell phones belonging to the Applicant were returned to the Applicant. The Applicant represented to the Court that he had information to suggest that his laptop computer (Mac Book) was stolen from the home of a police officer and that the Court should make an unless order for the return of his laptop failing which the indictment against him should be quashed. The matter was thereupon set for trial on 2nd November, 2015.

5. I am informed by the Learned DPP (Ag) and verily believe the same to be true that on 6th October, 2015 the laptop computer was returned, upon the Applicant's instructions, to the Chambers of Mitcham & Benjamin. A true copy of the Chain of Custody Form of the Police Force showing delivery and

receipt of the said laptop is now produced and shown to me and exhibited hereto and marked "DC 1".

Notice of Application for Disclosure

6. With regard to **paragraph 1** of the reliefs sought by the Applicant I am advised by the Learned DPP (Ag) and verily believe the same to be true that this relief is properly directed to the telephone company LIME and that the Office of the DPP has no control over LIME.
7. In relation to **paragraph 2** of the reliefs sought I am similarly advised and verily believe the same to be true that the computer of the deceased was not used and is not intended to be used by the Crown in the prosecution of this matter. Further that the bare request for the deceased computer without any factual or legal basis for same may amount to a fishing expedition on the part of the Applicant. Additionally, the release of the deceased computer to the Applicant or any expert on his behalf may have to be directed to the personal representative of the estate of the deceased.
8. With regard to **paragraph 3** of the reliefs, I am aware that the "Police Database" contains evidentiary material in relation to all cases under investigation by the Police and that it would be a serious interference and threat to the national security of the Federation for any access to be given to persons other than authorised members of the Police Force. Further, in relation to the Applicant's case the only evidentiary material/information stored on the Police Database are the photographs taken in this matter and all photographs are herein disclosed (as set out below).
9. In relation to **paragraph 4** I am similarly advised and verily believe the same to be true that there is no factual and/ or legal basis for the requested information. The Applicant has not indicated whether the requested

information will assist his defence and/ or the relevance of the information to his defence (case).

10. With regard to **paragraph 5** I am similarly advised and verily believe the same to be true that on or around April, 2012 all phone records in relation to mobile telephone number 660-6640 (belonging to the deceased) were disclosed to the Applicant along with the records for mobile telephone number 662-7011 belonging to the Applicant. Notwithstanding the prior disclosure in April, 2012 hereto attached and marked "**DC 2**" is a true copy of the telephone records for the aforementioned mobile telephone numbers for the period December 25, 2011 and December 31, 2011.
11. In relation to **paragraphs 6 and 14**, I personally downloaded on the attached "compact disc", exhibited hereto and marked "**DC 3**", all photographs taken in relation to this matter.
12. With regard to **paragraph 7** all notes taken by me in this matter were recorded in the "Crime Scene Diary" a copy of which is now produced and shown to me and exhibited hereto and marked "**DC 4**".
13. With regard to **paragraph 8** I am informed by Lt. Ancil Alexander and verily believe the same to be true that he made no notes in relation to this matter.
14. In relation to **paragraph 9** I know that no notes were made by WPC Stevens in this matter.
15. With regard to **paragraphs 10, 11, 12, 13, 15 and 16** I am informed by Lt. Ancil Alexander and verily believe the same to be true that on 29th May, 2015 he prepared a Report setting out all the items collected at the crime scene and at the Applicant's residence. I am further informed by Mr. Alexander and verily believe the same to be true that other than the test (for blood) set out in his said Report no other forensic tests were done by the Crime Scene Unit. A true copy of the said Report from Mr. Ancil Alexander dated 29th May, 2015 is now produced and shown to me and exhibited hereto and marked "**DC 5**".

16. Additionally a list of items collected during the investigation of this matter was prepared by me and a copy is now produced and shown to me and exhibited hereto and marked "DC 6".
17. I am advised by Superintendent Charles Smithen and verily believe the same to be true that all items, except the passport, belonging to the deceased were sent to the deceased family via the funeral home in St. Kitts (Jenkins Funeral Home).
18. With regard to **paragraph 17** I am informed by Superintendent Smithen and verily believe the same to be true that the Learned Magistrate Mrs. Karen Hill Hector did not make any notes during her visit to the crime scene which said visit lasted no more than three (3) minutes. Further, I am advised by Superintendent Smithen and verily believe the same to be true that no Report was submitted by the Learned Magistrate in relation to her visit to the crime scene on 30th December, 2011.
19. In relation to **paragraph 18** a detailed account of the incident which allegedly transpired on 26th December, 2011 between one Paul Bilzerian and the Applicant at Golden Lemon Inn was reflected in the statement given by the Applicant to then Inspector Vaughn Henderson on 31st December, 2011 which said statement was already disclosed to the Applicant. I am informed by Superintendent Smithen and verily believe the same to be true that he did not request any information from the Applicant in relation to the alleged incident (26th December, 2011) at Golden Lemon Inn and that the Applicant made no report to him on 1st January, 2012 about any such incident.
20. In relation to **paragraphs 19 and 20**, I am advised by Assistant Commissioner of Police (ACP), Mr. Ian Queeley and verily believe the same to be true that there are no records of any disciplinary matter against Superintendent Charles Smithen. I am advised by Superintendent Smithen and verily believe the same to be true that he was never placed on administrative leave and that his transfer to the Tabernacle Police Station was at his own request. I

am advised by ACP Queeley and verily believe the same to be true that two disciplinary charges were instituted against Police Constable Greg Glasgow during his employment in the Royal St. Christopher and Nevis Police Force. A true copy of disciplinary charges instituted against Police Constable Greg Glasgow is now produced and shown to me and exhibited hereto and marked "DC 7".

21. With regard to **paragraph 21** I am advised Lt. Ancil Alexander and verily believe the same to be true that there are no convictions against the witnesses Dale Brian and Marty Francis. A true copy of the Criminal Record Check dated 22nd October, 2015 is now produced and shown to me and exhibited hereto and marked "DC 8".
22. In relation to **paragraphs 22 and 23** copies of various reports in relation to the laptop of the Applicant being misplaced are now produced and shown to me and exhibited hereto as a bundle and collectively marked "DC 9".

And I make this Affidavit honestly and conscientiously believing that the contents herein are true and correct.

SWORN at the High Court Registry }

Sir Lee L. Moore, KCMG, QC }

Judicial & Legal Services Complex }

Basseterre, Saint Christopher }

This 22nd day of October, 2015 }

Before me:



MR. KENLEY HENRY
A COMMISSIONER OF OATHS
FOR ST. CHRISTOPHER / NEVIS



Damien Challenger

Respondent/D. Challenger/1st
"DC 1- DC 9"; 22-10-15/22-10-15

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Office of the Director of Public Prosecutions

Judicial & Legal Services Complex

Attorneys – At – Law for the Respondent