

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ST. KITTS

(CRIMINAL)

CLAIM NO.: SKBHCR2012/0054 BETWEEN:

THE DPP	)
	)
VS	)
	)
KEVIN ANDREW HORSTWOOD	)
	)
_____	)

TRANSCRIPT OF PROCEEDINGS

2 NOVEMBER 2015

BEFORE: HONOURABLE JUSTICE MARLENE CARTER

APPEARANCE:

By: Arudranauth Gossai, Acting  
Director of Public  
Prosecutions

For the DPP

BY: DR. HENRY BROWNE, QC  
assisting the Defendant

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MR. GOSSAI: Good morning, My Lady.

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THE COURT: Good morning, Mr. Gossai.

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For the Crown.

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MR. GOSSAI: May it please, My Lady,

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Mr. Silvany James and Ms Gordon.

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THE COURT: Yes.

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DR. BROWNE: If it please, My Lady,

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Grenville Browne. I appear with Dr. Henry

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Browne, QC.

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THE COURT: Yes.

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DR. BROWNE: For the defendant.

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THE COURT: All right. Dr. Browne, I

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know that you're there, but on the last

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occasion, I think sometime before that, as

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well, Mr. Horstwood had complained that he's

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not able to hear as well as he would like to.

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I'm willing to permit him to sit a little

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closer --

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DR. BROWNE: Yes, My Lady.

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THE COURT: -- maybe next to the

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officer here. Mr. Horstwood, you can sit next

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to the officer here. You're closer to your

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counsel.

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MR. HORSTWOOD: Grateful, Your

Ladyship.

THE COURT: Now what we have this morning, Mr. Gossai, Mr. Horstwood has made an application -- can you hear with the fan?

MR. HORSTWOOD: I can't hear with the fan.

THE COURT: Take the fan off, please, someone. Right. That's much better. Mr. Horstwood has made a notice of application for disclosure and has filed affidavits in support, and has also filed affidavits in response to your own -- sorry -- your own affidavit, which was filed, affidavit of Mr. Challenger. Mr. Horstwood has filed a response to that affidavit as well, I believe, I've seen it this morning. And I do have your skeleton arguments and bundle of documents. Now we were proceeding to hear this application on the basis that it's a pre-trial application for disclosure. Also -- well, also, there are issues raised with regard to abuse of process, closely linked to the disclosure and the Court thought that it would be better given, I think you agree,

1  
2 that the main matters that Mr. Horstwood  
3 complains of, go directly to the heart of the  
4 prosecution's case, or the prosecution's  
5 evidence in this matter. So it was for  
6 this reason that we were going to embark on  
7 hearing these matters preliminarily, yes?

8 MR. GOSSAI: Yes. In addition to that,  
9 too, My Lady --

10 THE COURT: Yes.

11 MR. GOSSAI: -- Mr. Horstwood has  
12 raised the issue of whether the indictment  
13 should be permanently stayed.

14 THE COURT: Yes.

15 MR. GOSSAI: So in those circumstances  
16 --

17 THE COURT: Yes.

18 MR. GOSSAI: -- even if the issues of  
19 abuse of process and disclosure could be  
20 dealt with (8.04) at trial.

21 THE COURT: Yes. The application for  
22 the stay.

23 MR. GOSSAI: The situation where the  
24 indictment itself is being challenged and the  
25 issues are unproven, respectively, that the

1  
2 Court entertain an argument, a hearing, to  
3 establish an arguments hearing --

4 THE COURT: Yes.

5 MR. GOSSAI: -- on whether the  
6 indictment should be stayed.

7 THE COURT: Yes. You're right. That's  
8 what he ultimately raised with regard to the  
9 abuse of process, yes.

10 MR. GOSSAI: The Court must stand back  
11 and Deliberate whether--

12 THE COURT: Yes.

13 MR GOSSAI: -- a trial can be held.

14 THE COURT: Yes.

15 MR. GOSSAI: Now, maybe it's -- I may  
16 have been a little lost because I discovered  
17 that, this is a matter that has been ongoing  
18 since 2011. And I've discovered in my  
19 review of the files that there were more  
20 civil applications filed in this matter than  
21 I am accustomed to in commercial matters..  
22 So, it took quite some time for me to go  
23 through those voluminous documents in order  
24 to enter our position as to what the Crown is  
25 going to be doing, and the Crown's answer to

1  
2 the issue of whether the indictment should be  
3 stayed.

4 THE COURT: Yes.

5 MR. GOSSAI: And interwoven in that is  
6 the issue of abuse of process and disclosure.  
7 So I think I will leave it there, in that  
8 manner.

9 THE COURT: Yes. Before you start, Mr.  
10 -- Dr. Browne?

11 DR. BROWNE: Yes, My Lady?

12 THE COURT: We will take it that the  
13 Court has read Mr. Horstwood's applications -  
14 -

15 DR. BROWNE: Yes, please, My Lady.

16 THE COURT: -- and affidavits

17 DR. BROWNE: Yes, please, My Lady.

18 THE COURT: And that the Crown well  
19 sees of what the issues are.

20 DR. BROWNE: Yes, My Lady.

21 THE COURT: So there's no need now for  
22 Mr. Horstwood, or yourself to innumerate  
23 those. It's all very clear --

24 DR. BROWNE: No, My Lady.

25 THE COURT: -- on the affidavits, on

the applications that have been filed.

DR. BROWNE: Indeed they are, My Lady.

THE COURT: Yes, okay.

DR. BROWNE: Thank you.

THE COURT: Yes, Mr. Gossai? MR.

GOSSAI: The defendant views first the issue of disclosure and I will deal with that issue in relation to the Preliminary Inquiry first and then I will move to disclosure in the High Court.

THE COURT: Yes.

MR. GOSSAI: In Mr. Horstwood's several applications and from very early on, he alleged that the Crown did not disclose an alleged confession statement until at the time of the Preliminary Inquiry when it was thought to be tendered by the Crown. And I point out in the submissions an example where, although the bail application is not before Your Ladyship. I put that in the bundle of documents in terms of showing a history of where the allegation in relation to the confession statement, at the Preliminary Inquiry, was made very early on,



1  
2 in an application for bail and affidavit in  
3 support where Mr. Horstwood alleged, (and  
4 that's his affidavit in support filed in  
5 support of his Fixed Date Claim) on the 1st  
6 of October 2013 that's part one of the bundle  
7 of documents.

8 THE COURT: Yes. As on the 1st of  
9 October 2013?

10 MR. GOSSAI: Yes, My Lady.

11 THE COURT: Yes.

12 MR. GOSSAI: Under Paragraph 6 of that  
13 affidavit, Mr. Horstwood posed that at or  
14 about the time of the committal proceedings,  
15 at or about the time when the committal  
16 hearing was almost completed, the confession  
17 was produced. It never having been referred  
18 to before. The Crown in answer to that  
19 affidavit and that's the 4th of October 2013  
20 at Paragraph 10, the Crown took the position  
21 that, the Crown said, in reply to Paragraphs  
22 4, 5, and 6, 6 is the crucial one here, the  
23 Respondent/Defendant asserts that these  
24 matters will be properly ventilated at the  
25 trial of the accused and when Your Ladyship

1  
2 goes through the bundle, Your Ladyship will  
3 see that throughout this allegation made here  
4 the Crown never refuted that what Mr.  
5 Horstwood was alleging, was a fact, or it was  
6 not a fact.

7 THE COURT: Yes.

8 MR. GOSSAI: Now, My Lady, that is  
9 important because the only evidence linking  
10 Mr. Horstwood to the alleged crime is the  
11 alleged confession statement.

12 THE COURT: Of the 1st of January?

13 MR. GOSSAI: Of the 1st of January.

14 Yes, My Lady. Allegedly taken by, now  
15 Superintendent Smithen, and allegedly was  
16 witnessed by Constable Glasgow. What is  
17 interesting about the preliminary inquiry is  
18 that there's a statement by Constable Damien  
19 Challenger of the Crime Scenes Unit that he  
20 had visited the area where the body was  
21 allegedly found and he took pictures of the  
22 area of the body, and he has processed for  
23 example materials belonging to Mr. Horstwood.

24 THE COURT: Yes.

25 MR. GOSSAI: For whatever reason, Mr.

1  
2 Challenger did not give evidence at the  
3 preliminary inquiry and the photographs that  
4 he allegedly took were not tendered into  
5 evidence at the Preliminary Inquiry.

6 THE COURT: Okay.

7 MR. GOSSAI: There was also a statement

8 --

9 THE COURT: Can I ask were these  
10 disclosed to Mr. Horstwood at that time?

11 MR. GOSSAI: Yes, My Lady, when I  
12 discovered that --

13 THE COURT: No, I'm talking about at  
14 that point. Wasn't called at the PI, were the  
15 photographs on Mr. Challenger's statement  
16 disclosed?

17 MR. GOSSAI: No. There is no record to  
18 show that it was disclosed.

19 THE COURT: Yes. Following that,  
20 there was a statement allegedly given by --  
21 but I don't think it's allegedly because Mr.  
22 Horstwood has maintained that he gave a  
23 statement to the police, then Inspector  
24 Vaughn Henderson on the 31st of January -  
25 sorry - on the 31st of December, 2011.

1  
2 Inspector Henderson was not called at  
3 the preliminary inquiry. But I believe  
4 that statement, of course, was not tendered  
5 into evidence at the preliminary inquiry, but  
6 was given to Mr. Horstwood at some subsequent  
7 stage, I believe. Again, there is no record  
8 from the Crown as to when disclosure would  
9 have taken place and what were the documents  
10 disclosed. So that's disclosure on the  
11 Preliminary Inquiry, I'm just giving a little  
12 background.

13 THE COURT: No, no, that's fine. I  
14 think it's very necessary, Mr. Gossai, for it  
15 to be on the record.

16 MR. GOSSAI: Yes, My Lady. Now the  
17 accused was charged and committed to stand  
18 trial on the (15.12) of August. Mr.  
19 Horstwood very early on through his attorneys  
20 in England at the time, sought disclosure of  
21 several documents, and in the -- in Mr.  
22 Horstwood's response that was filed on  
23 Friday, 30th of October, [2015] you will see  
24 Mr. Horstwood made notes about some dates  
25 that I didn't. Let me state on record

1  
2 that Mr. Horstwood is right in relation to  
3 that very important application. I was merely  
4 trying to show that it was done then, but it  
5 was done even recently on the dates mentioned  
6 because up until that time, 10th February  
7 2015 for example, in that submission to this  
8 Honourable Court, in disclosure that was  
9 being sought since 2013. There was not a  
10 compliance. Well, let me rephrase that.

11 There is no record from the Crown to  
12 show that the requested disclosure was  
13 complied with. The Crown noted, in February  
14 of 2015, that Mr. Horstwood had requested in  
15 his submission to Court, the use of his  
16 laptop computer (which was allegedly taken  
17 from him in December of 2011) Internet  
18 access in prison, because he was  
19 unrepresented, that he needed access to the  
20 representatives who would assist him in his  
21 legal research. and the unused prosecution  
22 material, telephone records and the return of  
23 his cell phones. In respect to Her  
24 Majesty's Prison, Superintendent of Prisons  
25 then, Mr. Dorset had responded to the issue

1  
2 of the Internet access, the use of Internet  
3 in prison, and I believe in the papers here,  
4 Mr. Horstwood replied to that argument saying  
5 that Internet access is being given to the  
6 prison band as required by prisoner or  
7 prisoners. Again, My Lady, for whatever  
8 reason the Crown never responded to that  
9 allegation, as to whether it was true or not  
10 true.

11 THE COURT: But I do think that those  
12 issues were ventilated at the hearing in May  
13 because, in fact, Mr. Dorset actually gave  
14 me his verbal evidence at the hearing in May  
15 and the Courts having heard that, having  
16 ventilated those same issues ruled that Mr.  
17 Horstwood's computer should be returned. But  
18 because of the concerns raised by Mr. Dorset,  
19 with regard to security at the prison, the  
20 Court did not order that Mr. Horstwood could  
21 have Internet access. So, the order at the  
22 time was for the return of the laptop, for  
23 the return of the phones and for Mr.  
24 Horstwood, as far as possible for the prison  
25 to facilitate him in the use of the laptop,

1  
2 et cetera. That was the order that was  
3 made at the time. So those matters were  
4 eventually ventilated.

5 MR. GOSSAI: My Lady, I stand  
6 corrected. But I was speaking to the  
7 documents that I have reviewed.

8 THE COURT: Yes. I know, but you said  
9 Mr. Dorset didn't actually respond, but I'm  
10 saying, yes, and it was noted and he actually  
11 gave me his verbal evidence when the issue  
12 was again raised by Mr. Horstwood at the  
13 hearing. Yes.

14 MR. GOSSAI: That's our documented  
15 process. My Lady eventually his cell phones  
16 were returned. Maybe some time in June,  
17 on the 2nd of June, the cell phones were  
18 returned and that's in the affidavit by Mr.  
19 Challenger that was filed on the 22nd of  
20 October. But the laptop was not returned  
21 until the 6th of October 2015. My Lady  
22 would see from the documents filed that, at  
23 the time when the affidavit of Damien  
24 Challenger was filed on the 22nd of October  
25 2015, there was a report into the laptop

1  
2 being misused while it was in the custody of  
3 the police.

4 THE COURT: Yes.

5 MR. GOSSAI: But, at that time, certain  
6 documents which were, prepared after June  
7 2015, prepared in August, only came to the  
8 Crown's attention on the 30th of October  
9 2015. That is in the affidavit of Ms. Mills,  
10 where the affidavit explained, that upon the  
11 accused and so it (20.28) Mr. Horstwood. And  
12 in that 30th of October 2015 report there  
13 were some attachments which show that they  
14 found that a police officer was using the  
15 laptop for his personal, as well as, for his  
16 work as a police officer between January 2012  
17 and June 2015. My Lady, why that is  
18 important is that, Mr. Horstwood, from the  
19 very get-go had made the allegation, or the  
20 assertion I should say, that laptop computer  
21 contained information showing his whereabouts  
22 on the 29th of December, in particular, and  
23 the alleged offence allegedly occurred  
24 between 28th and 29th of December 2011. So,  
25 what it means is that Mr. Horstwood is



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2 relying on that to be an alibi in his  
3 defence, if I may say that. Upon the return  
4 of the computer, Mr. Horstwood filed an  
5 affidavit, on the 22nd of October, indicating  
6 that it took him several weeks between the  
7 time the computer was returned on the 6th of  
8 October 2015 and the 22nd, for the prison  
9 authorities to attain resources--

10 THE COURT: The resources --

11 MR. GOSSAI: -- the resources to --

12 THE COURT: -- so that he could have  
13 access to the computer, yes. and in that  
14 affidavit, there's an allegation that files  
15 were removed. Added to that, that the  
16 computer was damaged and that they would  
17 require a foreign expert to access the hard  
18 drive of that computer because it was not  
19 accessible in literally half an hour, that  
20 Mr. Horstwood alleges, he was given by the  
21 prison authorities to examine his computer.  
22 So maybe fundamentally that is an issue that  
23 the Court has to take into account in terms  
24 of whether documents were, in fact removed,  
25 and the issue that it could have probably,

1  
2 allegedly removed any evidence that Mr.  
3 Horstwood could have relied on in his defence  
4 to the charge. Now, My Lady would have seen  
5 that the Crown is subject to some authorities  
6 on the conduct of police officers misplacing  
7 of evidence. The authorities however, seem  
8 to suggest that depending on the nature of  
9 the conduct of the police officers, the Court  
10 has the power to stay the proceedings because  
11 of an abuse of process.

12 THE COURT: Now, Mr. Gossai, before  
13 you go on.

14 MR. GOSSAI: Yes.

15 THE COURT: Let me make sure I'm  
16 understanding you. The many matters that  
17 we've just spoken -- that you've just  
18 narrated with regard to the second part of  
19 the disclosure, the High Court disclosure, if  
20 you can call it that, those are at this  
21 stage, quite apart from whether or not the  
22 computer or whether or not the files on the  
23 computer would, or would not, have assisted  
24 Mr. Horstwood's defence because you can't say  
25 that.

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MR. GOSSAI: Yes.

THE COURT: But apart from that, those are all -- the Crown accepts that those are all factual.

MR. GOSSAI: Yes.

THE COURT: That's a factual narrative that you've given me.

MR. GOSSAI: Yes, My Lady. What I --

THE COURT: The Crown accepts those facts.

MR. GOSSAI: Yes, My Lady.

THE COURT: All right. So at this point the Crown's position is, that those are the accepted facts. Mr. Horstwood's main allegation in regard to those accepted facts is this, the files -- my computer has been tampered with. That's accepted. There were files on that computer which could have assisted my defence to this charge. And at this stage he is saying that some of those files have been removed and that he would need to have some further analysis from an expert with regard to the hard drive to try to access those files, if at all possible.

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That's the position right at this point.

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MR. GOSSAI: Yes, My Lady.

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THE COURT: Okay. So for the

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Court's -- in terms of, as you say, the abuse

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of process argument, the Court has to look to

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see whether it finds or it can find, looking

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at those facts, that the police, if I can say

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misconduct, to encompass all of it, the

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police misconduct, yes --

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MR. GOSSAI: Yes.

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THE COURT: -- could have resulted in

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Mr. Horstwood not being able to put forward

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his -- the defence, which he says that could

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have been shown on these deleted computer

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files. That's where we are.

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MR. GOSSAI: Yes.

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THE COURT: So that's the first point.

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All right. All right. Let's go on from

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there.

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MR. GOSSAI: Now My Lady, the documents

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in the matter show that because of this non-

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disclosure of the computer and the other

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documents that Mr. Horstwood has requested,

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the matter had to be adjourned and adjourned.

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THE COURT: Yes.

MR. GOSSAI: So respectfully then, the Crown -- the Crown has caused the delay by the conduct of the police officer or officers who took the laptop home and was using it for his personal use. That's one. Secondly, in relation to the telephone record which eventually was disclosed, but it took some time before that was disclosed, but (27.49)--

THE COURT: So these are the telephone records for the two --

MR. GOSSAI: The cell phone.

THE COURT: -- phone, two cell phones, yes.

MR. GOSSAI: One belonging to -- the disclosure of cell phones that Mr. Horstwood had asked for, that he had made certain calls between himself and the accused --

THE COURT: Yes, yes.

MR. GOSSAI: -- on certain dates.

THE COURT: Telephone records of calls, yes, between 16 --

MR. GOSSAI: Yes.

THE COURT: Yes.

MR. GOSSAI: And the discovery -- I discovered that there were records that were produced by Lime by virtue of a court order.

Again, there is no record to show that the Crown disclosed these telephone records.

THE COURT: And when were they produced by Lime to the prosecution?

MR. GOSSAI: Maybe -- I believe it was some time in

THE COURT: The affidavit of Mr. Challenger, yes.

MR. GOSSAI: -- Mr. Challenger, the 22nd of -- Tab 19

THE COURT: Is that DC-2?

MR. GOSSAI: DC-2, yes.

THE COURT: It's a letter dated April 19th, 2012 addressed to the Director of Public Prosecutions.

MR. GOSSAI: Pubic Prosecution. And, you can see a subject reference claim number.

THE COURT: Yes.

MR. GOSSAI: I presume this is information to the order made by the court.

Now this is April 19, 2012.

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THE COURT: Yes.

MR. GOSSAI: The P.I. commenced on that date, or on the 19th was the disclosure.?

Yes, that was was the Crowns disclosure.

The P.I. commenced shortly thereafter.

There is no record again that this--.

DR. BROWNE: The disclosure you speak of is from Lime --

MR. GOSSAI: Yes.

DR. BROWNE: -- Lime. Lime didn't disclose anything to him.

THE COURT: No, no, Lime to the court.

DR. BROWNE: Fine.

THE COURT: This is the letter from Lime to the Crown dated the 19th of April.

DR. BROWNE: Very well, My Lady.

THE COURT: Yes.

MR. GOSSAI: Lime would have disclosed to the Crown.

DR. BROWNE: Very well.

MR. GOSSAI: There's no record from the Crown that these telephone records were then disclosed to Mr. Horstwood.

THE COURT: And you're saying not

disclosed before the PI?

MR. GOSSAI: Well, there's no record of that this was disclosed at all,

THE COURT: at all

MR GOSSAI: at all, yes My Lady. Now, My Lady, if I may say so, To be fair to Mr. Horstwood is that, I very well believe that it was not disclosed because, given the conduct of Mr. Horstwood throughout the time that he was incarcerated, I would believe respecting (30.45) that had these been disclosed Mr. Horstwood would have said something about them, because --

THE COURT: he was asking about them.

MR. GOSSAI: Yes, because if Your Ladyship would have looked at potentially (30.00), but for my own purpose cross referencing the telephone records with the statement given by Mr. Horstwood on the 31st of December 2011, match very closely, because in that statement Mr. Horstwood alleged that he would have made certain calls to the deceased between the 27th, 28th, 29th, 28th of December, and that was reflected in the



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2 telephone records that were disclosed by  
3 Lime. My Lady, those records were eventually  
4 disclosed to Mr. Horstwood on the 22nd of  
5 October 2015. So that's more than three years  
6 after they were available to the Crown by  
7 Lime, by the telephone company Lime. Again,  
8 My Lady, that was the conduct of the, I'd  
9 have to say the Crown, and I cannot just say  
10 police or DPP because they fall under the  
11 purview the Crown. The Crown is prosecuting  
12 Mr. Horstwood.

13 THE COURT: Yes.

14 MR. GOSSAI: The pictures that were  
15 allegedly taken by Mr. Challenger on the --  
16 at the time of the alleged site of the body  
17 were disclosed to Mr. Horstwood on the 22nd  
18 of October 13 2015 as well.

19 THE COURT: For the first time.

20 MR. GOSSAI: For the first time, yes,  
21 My Lady, as per the record. Now, My Lady,  
22 what is interesting as well and, I'm pointing  
23 these out before I get into the cases,  
24 because when I start pointing out the  
25 authorities to Your Ladyship you would

1  
2 understand -- My Ladyship would have a better  
3 appreciation of why those cases were (33.14).  
4 Now, when Your Ladyship, and I'm not sure if  
5 My Lady has done so, look at the confession  
6 statement of the 4th of January, it is  
7 alleged that the death of the deceased  
8 occurred as a result of an accident and that  
9 the alleged incident took place in Mr.  
10 Horstwood's kitchen. For whatever reasons,  
11 the Crime Scene Unit, did not examine that  
12 kitchen. And I'm pointing these out because,  
13 having reviewed the file for myself, these  
14 are the things that would have jumped out at  
15 me as a prosecutor, and I leave that there.  
16 So, My Lady, I repeat the point that the only  
17 evidence connecting the accused to the crime  
18 is the alleged confession statement. At the  
19 time when the Crown closed its case at the  
20 preliminary inquiry, Mr. Horstwood in his  
21 statement to the Magistrate, he indicated  
22 that, that statement of the 4th of January is  
23 not my statement, and if it was disclosed  
24 earlier I would have sought to get it  
25 examined by an expert. At that time, as well,

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2 Dr. Browne, learned Queens Counsel who  
3 appeared for Mr. Horstwood at the preliminary  
4 inquiry, was not present when the alleged  
5 statement was being tendered into evidence,  
6 and Mr. Horstwood asked for an adjournment so  
7 that he can consult his legal representative  
8 in relation to the statement. Ms. Angela  
9 Inniss of counsel was present. There was no  
10 cross examination of Mr. Smithen. Now, Mr.  
11 Horstwood has not raised that as an issue,  
12 but if Your Ladyship looks at the deposition,  
13 Your Ladyship would see that when the  
14 Constable Glasgow gave his evidence as for  
15 his alleged witnessing of the statement. He  
16 was cross examined at length, to my mind, by  
17 Dr. Browne. So, the question is, I'm not  
18 sure, whether the -- the record doesn't show  
19 that Ms. Inniss was holding for Dr. Browne,  
20 or whether she was then appearing as counsel,  
21 but no questions were put to the maker, the  
22 taker of the statement, which, again, to my  
23 mind respectfully raises some questions. Be  
24 that as it may, Mr. Horstwood (36.28). Now,  
25 in the High Court Mr. Horstwood has asked for

1  
2 the statement to be examined by experts on  
3 signature and handwriting because the alleged  
4 statement has, on Page 1, an alleged  
5 signature, and Kevin Horstwood is written in  
6 block capitals on all the pages there. Now,  
7 My Lady, one strange factor about that  
8 alleged statement of the 1st of January 2012,  
9 is that in the statement of 31st of December  
10 2011, Mr. Horstwood signs his name on each  
11 page of that statement. On the alleged  
12 confession of the 1st of January 2012,  
13 there's one signature and then Kevin  
14 Horstwood is written on every page  
15 thereafter. Now, just to bring matters  
16 closer, some of the history, the statement on  
17 application of the Crown was sent to FBI  
18 analysts in the U.S., and the FBI analyst  
19 issued a report. It's at Tab 18, as well as  
20 Tab -- it's in the affidavit of Mr.  
21 Horstwood, as well as the affidavit of Mr.  
22 (38.09) but Tab 18 was the report of the  
23 FBI. Tab 18 has the application, as well as  
24 the affidavit and the exhibits attached.

25 THE COURT: Yes.

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MR. GOSSAI: Yes, My Lady.

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THE COURT: Page 1 (39.05).

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MR GOSSAI: That's the report from -- no, that's the report from Mr. Anthony Stockton.

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THE COURT: Page 2

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MR. GOSSAI: is the FBI report. That one is dated 19 March 2012. Now, the results --

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THE COURT: Yes.

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MR. GOSSAI: Kevin Horstwood, writer of K-1, now K-1 refers to known signatures of Kevin Horstwood. These are signatures which were sent to the FBI, eight signatures from inland revenue, traffic department and immigration department and those kinds of things. So, the results were Kevin Horstwood, writer of K-1, prepared a hand printed Kevin Horstwood entries on Q-1, Q-1 is the questioned statement, while some pictorial similarities were observed between the questioned Kevin Horstwood signature on Q-1 and those on K-1, (that is the alleged statement and the known signature), it could not be determined whether Horstwood prepared

1  
2 this signature, due to the presence of  
3 characteristics that were not observed in the  
4 known writing, the limited legibility of the  
5 questioned signature and the wide variations  
6 of known signatures. So, FBI is saying Mr.  
7 Horstwood wrote the Kevin Horstwood that was  
8 written on the pages, but they couldn't say  
9 that he signed Page 1 of the confession  
10 statement. Mr. Horstwood then decided that  
11 he's going to have his own expert -- well,  
12 let me rephrase that -- expert appointed by  
13 him to examine the signature. And that is  
14 at Page one. That report was by Anthony  
15 Stockton, Question Document Service, and is  
16 dated 28th of March 2013. At page five, the  
17 findings by that expert were, "Based on the  
18 material examined, (that's the second  
19 paragraph). in my opinion, the findings  
20 taken together provide strong support for the  
21 proposition that the signatures on the  
22 witness statement dated 1st January 2012 are  
23 not normal genuine signatures written by  
24 Kevin Horstwood. In my opinion, I consider it  
25 is likely that an attempt has been made to

1  
2 simulate Kevin Horstwood's signature on Page  
3 one and that someone other than Kevin  
4 Horstwood has produced the block capital  
5 Kevin Horstwood entries. So, both the FBI and  
6 Mr. Stockton agree that, on the signature,  
7 that they could not say, or the FBI said they  
8 could not say, but Mr. Stockton saying that  
9 it is not. On the handwriting that's the  
10 written Kevin Horstwood, the FBI is saying,  
11 yes, Mr. Stockton is saying, no. Now, there  
12 is time (42.41) jump to any conclusions, that  
13 doesn't mean I'm finished, but I've referred  
14 Your Ladyship to authorities on the issue of  
15 where there is conflicting expert reports.

16 And not just conflicting expert report,  
17 but in the case where the only evidence  
18 against the accused is based on expert  
19 analysis, and I refer her Ladyship to the  
20 first case of R. v Cannings 2004 1 All ER 725  
21 TAB 12 of the authorities where it was said,  
22 if the outcome of the trial depends  
23 exclusively or almost exclusively on a  
24 serious disagreement between distinguished  
25 and reputable experts, it will often be

1  
2 unwise and, therefore, unsafe to proceed.

3 Now, My Lady, I always thought that the  
4 question of disagreement with any evidence,  
5 including expert, was a matter for the jury

6 It would seem that that is still the  
7 principle of law, but only where it is not  
8 the only evidence against the accused. So,  
9 the next case I refer to My Ladyship to is R  
10 v Hookway [2011] EWCA Crim. 1989 TAB 13. The  
11 Court held that, "it was open to the jury to  
12 consider the conflicting evidence, example,  
13 the two expert witnesses, and place whatever  
14 weight they consider appropriate on the  
15 opinion of either expert. Hence the Court  
16 rejected the contention that the DNA evidence  
17 should have been withdrawn from the jury.  
18 The case was different from Cannings, because  
19 among other things, the prosecution case did  
20 not depend exclusively, or almost  
21 exclusively, on the prosecution DNA  
22 evidence". So take those two cases together  
23 as central My Lady, I respectfully submit  
24 that in this case where the only evidence  
25 connecting the accused is the alleged



1  
2 confession statement of the 1st of January  
3 2012. And we have two reputable experts  
4 examining, one being no less than the next  
5 that it would be unsafe, and I believe  
6 respectfully unfair, to leave a question like  
7 that to the jury, who will in effect be  
8 examining the signatures with untrained eyes  
9 and have two conflicting reports. It would  
10 end up being a guessing game as to would they  
11 believe the FBI or would they believe Mr.  
12 Stockton. So, I believe My Lady I won't,  
13 I believe I can't, take myself down that  
14 road. I will not. There's some more things I  
15 need (45.51). So that -- those two  
16 authorities and the facts of this case  
17 suggest that the Crown cannot proceed. It  
18 would be unsafe and unfair to Mr. Horstwood  
19 for the Crown to proceed with this case  
20 against him on that basis. Now, coming back  
21 to the conduct of the Crown, and I say Crown  
22 again (46.23). I refer Her Ladyship to  
23 the case of Khalid Ali et al against the  
24 Crown Prosecution Service [2007] EWCA Crim 69  
25 as reported. I refer to the Paragraph 46 of

1  
2 my submissions. And it says there, -- "in  
3 cases where it was unfair to try the  
4 defendant at all, because of bad faith or  
5 executive manipulation, the verdict itself  
6 may not be safe But in general where the  
7 Court concludes that the hearing was unfair,  
8 it will not be able to avoid a conclusion  
9 that the verdict was unsafe. There is  
10 also a possibility that the missing evidence  
11 mislaid by the Crown coupled with the conduct  
12 of the prosecution can lead to a verdict  
13 being unsafe. Now, My Lady, if Your Ladyship  
14 ordered that it would be safe to prosecute  
15 Mr. Horstwood and that he will have a fair  
16 trial, the question comes back as to whether  
17 the Court would then order the Crown to pay  
18 for an expert, to examine the computer of Mr.  
19 Horstwood. Now respectfully I say that it  
20 is the Crown's misconduct that led to the  
21 trial of the accused, (48.06), and to the  
22 alleged files being missing from the  
23 computer. And so, it may render prosecution  
24 and the Crown into disrepute, if the Crown  
25 were to say give us the chance, we'll pay and

1 we will have an expert come in to St. Kitts  
2 to correct all round, I believe, My Lady,  
3 respectfully, that would be an absurdity,  
4 because that being the case it means that,  
5 one, the Crown took four years to disclose  
6 the computer. Having disclosed it, the Crown  
7 has been using it for personal reasons. And  
8 having disclosed it now, the Crown is saying,  
9 well, let's keep Mr. Horstwood - mind you My  
10 Lady, this is the Crown that has been  
11 opposing the bail from (49.5)-- so the Crown  
12 is now saying, keep Mr. Horstwood  
13 incarcerated, let him wait again for his  
14 trial while we try to discover whether we,  
15 the Crown, deleted any files from the  
16 computer. So, (49.26) we had him in custody  
17 for four years. But be that as it may, I  
18 respectfully believe it would be (49.35) for  
19 the Crown to even have made such an  
20 investigation, putting the Court in an unfair  
21 position, or asking the Court to make a  
22 determination that the end justifies any  
23 means. And citing the case, Your Ladyship,  
24 where the house of Lords (49.54) that's R v  
25

1  
2           Latif [1996] 1 All ER 353, at Page (50.14)  
3           where the Court said -- yes House of Lords My  
4           Lady.       The Court said, in assessing  
5           whether there is an abuse of process the  
6           trial judge had to weigh in the balance the  
7           public interest in ensuring that those who  
8           are charged with grave crimes should be tried  
9           and the competing public interest in not  
10          conveying the impression that the Court would  
11          adopt the approach that the end justified any  
12          means when exercising its discretion to  
13          decide whether there had been an abuse of  
14          process which amounted to an affront to the  
15          public conscience and required the criminal  
16          proceedings to be stayed. Now when this --  
17          this part of the case Is heard My Lady  
18          because of the multiple breaches allegedly  
19          set forth by the Crown, first of all to  
20          provide disclosure as mandated by the law.

21               And then secondly, to delay an obey of  
22          Your Ladyship's order that disclosure be  
23          made.       So, the cases I've cited, Your  
24          Ladyship, it would seem that the misconduct (   
25          ) police proposing uncover persons and having

1  
2 made the case come to trial, and subsequently  
3 charge the accused. But in this case,  
4 starting with the alleged confession  
5 statement, coupled with the non-disclosure at  
6 the Preliminary Inquiry, coupled with non-  
7 disclosing or tendering of the first  
8 statement that was made, coupled with the  
9 non-disclosure of photographs, coupled with  
10 the forensics not examining the alleged area  
11 where this incident occurred, coupled with  
12 the tampering of the computer. And I could  
13 go on and on, My Lady.

14 THE COURT: Well, it's interesting  
15 because any one -- any one of them, by  
16 themselves, would have caused an application  
17 under these grounds to be made, any one of  
18 them by themselves. Whether or not it  
19 would have been successful, I can't say. But  
20 any one of them in and of themselves could  
21 have led to an application being made.

22 MR. GOSSAI: Yes My Lady. Now, My Lady,  
23 as I say, I accept that (52.38) if this  
24 matter Were to proceed to trial it means that  
25 Your Ladyship's direction (indiscernible)

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2 because you will have to give them  
3 (indiscernible) so they know all of this is  
4 on the part of the Crown. So, the question  
5 again is, would that be fair to the jury but  
6 most importantly fair to Mr. Horstwood, in  
7 the case where the Crown has caused this all  
8 along. So, My Lady, I believe I have put the  
9 position for us to reflect (53.20) on records  
10 and I've gone through every single document  
11 that was filed between January 2012 and  
12 October 2015. And one thing, My Lady,  
13 initially was my discovery of the documents  
14 and the (53.42). And given all of that and  
15 the circumstances, My Lady, even if Your  
16 Ladyship were to somehow find (53.51) a fair  
17 trial could still be had, and I do not know  
18 respectfully whether it can, unless there's  
19 some case that I'm not seeing, that (54.05)  
20 the authority on the part of the (54.06). And  
21 as Your Ladyship quite rightly said and I  
22 truly agree that any misconduct by the Crown  
23 by himself -- by itself can render a trial  
24 unsafe and respectfully, it would be unfair  
25 and shock the public conscience to proceed

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2 with the prosecution in this manner against  
3 Mr. Horstwood, or any accused who find  
4 themselves in this position. (54.44) My Lady,  
5 I respectfully submit (54.53) the respectful  
6 submissions. The final submissions of the  
7 Crown.

8 THE COURT: Yes, Mr. Gossai. And I  
9 thank you for that. But so, I want to be  
10 sure what your final conclusion is. Your  
11 final conclusion is that the Crown therefore  
12 will not proceed in this prosecution against  
13 Mr. Horstwood?

14 MS. GOSSAI: Yes My Lady Not in good  
15 conscience.

16 THE COURT: All right. Thank you  
17 very much Mr. Gossai. As I have always said  
18 and I maintain because I believe in it, the  
19 system -- criminal system of justice demands  
20 -- demands that fairness to the accused be  
21 the cornerstone and its fairness to the  
22 accused that is directly related to the rule  
23 of law in our society. The fact that the  
24 Crown, as you would say, big and bad and  
25 resourceful, having all the resources and the

1  
2 power, must be held to account in order to  
3 ensure that an accused has -- gets a fair  
4 trial. The prosecution is actually --  
5 although it might be that there's an  
6 adversarial system, or so it seems, but  
7 really, to my mind, the prosecution --  
8 Director of Public Prosecutions, the reason  
9 that he's imbued with all this power and if I  
10 could say, almost on a par with the judiciary  
11 in terms of independence and so that the  
12 director actually acts as a safeguard --  
13 another safeguard to ensure fairness to an  
14 accused. Mr. Gossai, I applaud you for what  
15 you've done today. I know it would not have  
16 been easy. It's never easy to have to  
17 examine what has been done in the name of the  
18 Crown, because that's where you stand. To  
19 say that we have -- there have been  
20 misconduct, the faults and I think in this  
21 case especially when it relates to an  
22 unrepresented defendant, I think that's what  
23 I find absolutely reprehensible in this case,  
24 that we're dealing with an unrepresented  
25 defendant. So I applaud you. I thank you



1  
2 for frankness this morning, Mr. Gossai. It  
3 accords with the highest traditions of the  
4 DPP's office and the position that you stand  
5 in today and in your position as an officer  
6 of the court. So I applaud you for your  
7 decision this morning.

8 MR. GOSSAI: Thank you.

9 THE COURT: Thank you. Dr. Browne,  
10 would you like to say anything? Mr. Gossai  
11 has indicated that the Court -- the  
12 prosecution -- the DPP will not proceed on  
13 this indictment against Mr. Horstwood.

14 DR. BROWNE: My Lady, I wouldn't burden  
15 you with any (57.47) in this case. Mr.  
16 Gossai has gone through the record in this  
17 matter and has very fairly put his position  
18 to both sides. He is to be tremendously  
19 applauded for that. But I must say, My Lady,  
20 this is one of the most serious cases, if not  
21 the most serious case I have observed where  
22 the Crown has abused its power. And I'm  
23 totally grateful to my learned friend for  
24 being so fair and frank with the Court.  
25 There's nothing further.

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THE COURT: Thank you. All right.

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Mr. Horstwood, just go back into the dock for one minute. Mr. Horstwood, you have heard Mr. Gossai of the DPP this

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MR. HORSTWOOD: Yes, Your Ladyship.

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THE COURT: He's answered the submissions that you've made with regard to non-disclosure and abuse of process in this matter --

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MR. HORSTWOOD: Yes, Your Ladyship.

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THE COURT: -- and also your application ultimately for a stay of the indictment. After going through all of the many matters, he has indicated that the DPP will not be proceeding with this matter against you and I say, quite fairly. So --

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MR. HORSTWOOD: Thank you, My Lady.

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THE COURT: -- at this time I will say that with regard to Indictment Number 54 of 2012, that given the indication by the DPP, you are formally discharged on that indictment, sir.

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MR. HORSTWOOD: I'm grateful your Ladyship.

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2 THE COURT: You can come down. I don't  
3 believe there's anything else holding Mr.  
4 Horstwood. Mr. Horstwood, subject to  
5 whatever the prisons might need to do, you  
6 are free to go, sir.

7 DR. BROWNE: Thank you, My Lady.

8 MR. HORSTWOOD: Thank you, your  
9 Ladyship.

10 THE COURT: Yes. Sit there for a  
11 moment. Just sit there for a while. Sit  
12 there for a moment. (movement of people) You  
13 have to forgive Mr. Horstwood. I don't think  
14 he quite knows what to do with himself.

15 MR. HORSTWOOD: I was going to say, to  
16 Mr Gossai.

17 THE COURT: All right, sir.

18 MR. HORSTWOOD: My Lady --

19 THE COURT: Yes. You --

20 MR. HORSTWOOD: -- it's a breath of  
21 fresh air to see that sort of evenhanded  
22 analysis when we've had so much, nearly four  
23 years of nonsense--

24 THE COURT: All right, Mr. Horstwood.

25 DR. BROWNE: Okay, Mr. Horstwood --

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2 THE COURT: I know that you will have  
3 -- I know you will be able to ventilate all  
4 of those matters.

5 MR. HORSTWOOD: Expressing my  
6 thoughts.

7 THE COURT: Yes. And express all your -  
8 - all of that that's been kept inside. Thank  
9 you very much, Dr. Browne, Mr. Gossai. The  
10 Court will rise until next Monday -- on  
11 Monday, please? Thank you.

12 COURT OFFICER: All rise. This  
13 Honourable Court now stands adjourned until  
14 Monday, 10th day of November, 2015 at nine in  
15 the forenoon. God save the Queen and this  
16 Honourable Court.  
17

C E R T I F I C A T E

I, Kevin Andrew Horstwood, certify that the foregoing transcript of proceedings IN THE HIGH COURT OF JUSTICE in ST. KITTS, CLAIM NO.: SKBHCR2012/0054 BETWEEN THE DPP vs KEVIN ANDREW HORSTWOOD is a true and accurate record of the proceedings.

Signature \_\_\_\_\_

Date \_\_\_\_\_