Deborah Bastian: Now, I have a concern here.

ASP Thompson: What page that is?

Deborah Bastian: Ummm, no, it isn't....

ASP Thompson: Uh huh, go ahead.

Deborah Bastian: Don't worry about the page.

ASP Thompson: Okay.

Deborah Bastian: You know when we were here on Monday...

ASP Thompson: Uh huh

Deborah Bastian: Y'all were indicating that we shouldn't mention the word coaching.

ASP Thompson says in unison: Mention the word "coach"? Okay.

Deborah Bastian: And, I mean, I don't know...

ASP Thompson interjects: Let me go back to that. So you want to say, "I told him"?

Deborah Bastian: I don't know, I don't know. In essence, that's what it is. It was coaching.

ASP Thompson reads paper: "He and I spoke about what he should tell Mr. Gibson". And then I ga put a comma there and take out the word, after Gibson, and lets go to, "I told him you have to tell him how much people". Don't use the word coaching.

Deborah Bastian: Y'all tell me, because...

Raymond Rolle: Encourage, encourage might be a better word.

Deborah Bastian: Because remember y'all said now if I say...

ASP Thompson: "I encouraged him? I start encouraging him?" I was going to take that out.

Raymond Rolle: Okay.

ASP Thompson: After the word 'and'...

Raymond Rolle: Take that out.

ASP Thompson: I was going to take that out and then I'll just come to where the comma is and say "I told him that you have to say how much people you have working, how much equipment you using". That's just standard stuff.

Deborah Bastian: Yeah

Raymond Rolle: Yeah

Deborah Bastian: See because if you leave "coaching" in there...

ASP Thompson: I took it out

Deborah Bastian: And they ask me about it...

ASP Thompson: Uh huh, okay.

Deborah Bastian: I have to truthfully tell them what included "coaching".

ASP Thompson: So let me read it again. "Once he agreed to meet with Minister Gibson, he and I spoke about what he should tell Mr. Gibson. I told him, 'You have to say how much people you had working, how much equipment you used, and what your response would be'". Or I could take...just go to "use", put a full stop after "use" and not say "And that your response would be".

Deborah Bastian: I don't know. Y'all would have to guide me.

ASP Thompson: Because it's just standard, that you need, as a justification for the large amount. He has to tell him how much people he had, how much equipment he used...

Deborah Bastian: Uh huh

ASP Thompson: To justify the days he worked, to justify that large amount.

Deborah Bastian: Uh huh

Raymond Rolle: Yeah

ASP Thompson: So that's standard. Ain't nothing, ain't nothing untoward there.

Deborah Bastian: Okay.

(Silence)

ASP Thompson: So I leave that there.

Deborah Bastian: Just that, I don't want the question to come back at me in court...

ASP Thompson: Yeah. I'll take out "coaching", I'll take out "coaching" so it don't imply that y'all had a conspiracy...

Deborah Bastian: Yes, because that's what we did. We did conspire.

ASP Thompson: Yeah

Deborah Bastian: That's what it is. It was consp....

ASP Thompson: Only in the sense that you wanted him to be able to explain how he got that large sum.

Deborah Bastian: Yes, to get his money. Yes. Because...

ASP Thompson: Ain't nothing else. Not like y'all were trying to offer a...

Deborah Bastian: It wasn't until I left here then I thought about what that lady said because really and truly, until his lawyer said, talked about entrapment, I mean I don't know, I didn't know what entrapment was.

ASP Thompson: Uh huh. That's why I took out.... Yeah, it's a lot of stuff, other stuff there that I took out because I don't want, where you say... I think in your, in the earlier statement you mentioned where he had come up with a figure, all that stuff....

Deborah Bastian: Yeah

ASP Thompson: I took all that out so the only coaching you gave him was as a relation to how many persons he had working, the personnel he had working, how many equipment he had there and the days he worked that justify the large figure at the dump site.

Deborah Bastian: Uh huh. Okay. Alright.

ASP Thompson: That's it. All that other stuff, we ain't talking about that.

Deborah Bastian: Okay.

ASP Thompson: And that won't come out unless you bring it up but I took all that out.

Deborah Bastian: No, I, I wouldn't bring it up.

ASP Thompson: I try to keep it general....Okay, "So then I told Ashe to say", I took all that out just now. And then...

(Silence)

(Background chatter)

(Silence)

Conversation resumes at 23:03

ASP Thompson: Gaskin called me last night on this file so I have to drop this off to him today. He is expecting to see, especially her statement, he wants to see that.

Raymond Rolle: Uh huh

Deborah: Yeah, because.... Ummm (pause) Y'all ain't treating me right.

(Raymond Rolle chuckles)

ASP Thompson: What? Who is y'all?

Deborah Bastian: I still ain't get my tingum (colloquialism) from Gaskins those yet.

ASP Thompson: What's that?

Deborah Bastian: I still don't have the immunity.

ASP Thompson: I think that must be why he wanted to see the statement.

Deborah Bastian: Okay

ASP Thompson: Because he keeps saying that "It ain't enough" and "it ain't enough" and it... That's what he said...

Deborah Bastian: Yeah!

Raymond Rolle: Well, not recently.

Deborah Bastian: Not recently. That's what I'm saying.

(Silence)

(Pages turning)

Conversation resumes at 27:31

Deborah Bastian: There's only one other concern I have, um, not with this, not with this, but with something that Ash released on Monday. Um, I haven't discussed it with my lawyer so I don't even know how to say it but Ash, I hope he doesn't have that in his statement where he says he called his daddy because remember he was always saying that he was telling me "No". He said, "I'm not"... He always said he told me even though I know he never told me that...that he wasn't going to pay Gibson because I don't want it to come up to say...

ASP Thompson interjects: No, I think he took all that out.

Deborah Bastian: Okay, why, if he was telling me, if he says in his statement he is telling me no he isn't paying Gibson (papers shuffle) why all of a sudden he call me and give me money for Gibson. I was saying I hope he don't have that in his statement to say his daddy tell him because that's how it would be implied. If he was telling me no all along, why all of a sudden he give me money to give to Gibson if he say he ain't paying Gibson no money.

ASP Thompson: Yeah, we took all that out.

Deborah Bastian: Okay. Alright. just wanted to make sure. Yeah

ASP Thompson: Anything else, Mr. Rolle?

Raymond Rolle: No, that's it.

ASP Thompson. Alright, let me just print this quick and then she can sign off on it.

(Silence)

ASP Thompson: I'll be right back.

Deborah Bastian: She don't have to change the date? Because she has the 25th of July. Remember the last day we did was the 3rd of August.

Raymond Rolle: She wanted that date.

Deborah Bastian: Oh, she wanted that date. Okay.

(Raymond Rolle: The charge is officially when they go before the court.

Deborah Bastian: Ohhh, it has to be before they charge him.

Raymond Rolle: No, it don't have to be before. They can gather information after they charge him.

Deborah Bastian: Okay.

Raymond Rolle: They can gather information after. I see she has the 25th

Deborah Bastian: No, she has the 25th of July not the 25th of September.

Raymond Rolle: Oh, I was thinking September (laughter)

Deborah Bastian: No, uh uh.

Raymond Rolle: (inaudible)...point that out to us. We were here on that day in July. We were here in July.

Deborah Bastian: No we were here, remember? Oh, you know what happen? We were here on the 4th of August to sign but she said she needed it to be done before he got charged. The statement? Now, I remember. She said the statement needed to be reflected.

Raymond Rolle: That's why she has the 27th on it.

Deborah Bastian: 25th of July

Raymond Rolle: 25th

Deborah Bastian: Yeah. Yeah.

(Silence)

(Yawning)

Bastian
~~Female~~: Um, you may need to, sorry. You may need to change your first page. You see where you have age? Oh, you don't have to... Its just that you don't have age.

Raymond Rolle: Age is blank. Age is blank. You don't have to put age.

ASP Thompson
~~Female~~: That's fine. (pause) Oh, and sign there. Bottom left on each page.

Deborah Bastian: At the top or the bottom of it?

ASP Thompson: This one here and everything else is bottom left.

Deborah Bastian: Okay. At the bottom of it? Okay

ASP Thompson: Okay, so the file goes to the AG's Office and sometime today, Mr. Rolle, you should be hearing from Mr. Gaskins.

Raymond Rolle: Yeah, okay.

ASP Thompson: Only one other report and I'm going upstairs to get that and...

Raymond Rolle: This matter comes up soon?

ASP Thompson: Next week Tuesday. Next week Tuesday so they have to serve the VBI on the 3rd.

Deborah Bastian: Ohhhh

Raymond Rolle: With all the statements and everything in it.

ASP Thompson: He calling like crazy. He wants his file.

(Raymond Rolle laughs)

(Pages turning)

Raymond Rolle: So when your acting is taking over as the substantive person?

ASP Thompson: If you listen to the rumor mill, something will happen between the next five weeks.

Raymond Rolle: Five weeks? All of that?

ASP Thompson: Yeah. That won't happen 'til that one come back off leave.

Raymond Rolle: Oh, he just gone on five weeks.

Asp Thompson: So, he's now, what? He should be in his third week? So he have two more weeks. They're saying the 18th of next month. That's what everyone... like that day, like that number. Everything is the 18th. So, we'll see what happens.

Raymond Rolle: So what is the morale like?

ASP Thompson: Everybody pensive.

Raymond Rolle: Don't know what to expect aye? Figured as much.

Raymond Rolle: I don't know why y'all pushing him out like that.

ASP Thompson: No, he is a good fella. Big shoes to fill you know.

Raymond Rolle: I know.

ASP Thompson: Big shoes to fill.

Deborah Bastian: People think it's an easy job.

ASP Thompson: Its not. No.

Deborah Bastian: Not until you get in it, you realize. Lord get me out of this because I don't know how, I get in this

ASP Thompson: This politics is, I don't know...

Raymond Rolle: Something else. We'll see how it develops.

(Inaudible chatter)

Raymond Rolle: Alright.

Bashian - I aint Coming back

ASP Thompson: You ain't coming back.

~~Deborah Bastian~~: If they want me change something...I'n doing nothing no more.

ASP Thompson: You Know this like a hot potatoe I wun get rid.

(Inaudible chatter)

Bashian - You know how long I aint sleep

(Footsteps)

Deborah Bastian: (inaudible) Really. You're a police officer now. Think about it. If anybody that they need to get rid of (inaudible) hearsay... (inaudible) PLP....(inaudible) ...The Lord is my Shepherd...

Raymond Rolle: Okay

Deborah Bastian: Alright. Take care.

(Footsteps)

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IN THE SUPREME COURT

COMMONWEALTH OF THE BAHAMAS

REGINA V GIBSON

Draft submissions in support of application for a stay of criminal proceedings against Shane Gibson by reason of abuse of process and breach of his constitutional right to a fair trial and the protection of the law

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Introduction

1. This is an application to stay the criminal proceedings against Shane Gibson on grounds of abuse of process and breach of his constitutional right to a fair trial and to the protection of the law.

2. The applicant submits that a stay on grounds of abuse of process is justified on both limbs of the court's abuse jurisdiction in the sense that there has been both executive misconduct which undermines public confidence in the criminal justice system (of the type recognized in the case **Warren v Attorney General** [2012] 1 AC 22 at paragraph 26 and conduct which renders a fair trial impossible. So, **firstly**, there has been "grave prosecutorial misconduct" which undermines public confidence in the criminal justice system and makes it wrong for a trial to take place at all by reason of the

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police's wholly improper conduct of a session with the two leading prosecution witnesses and their lawyers in which they were encouraged to compare and coordinate their evidence and coached as to what to say. **Secondly**, the conduct of the police in holding the coaching session with the two key witnesses and their lawyers has rendered a fair trial impossible.

3. The principal grounds on which the applicant bases his case on both limbs of the abuse jurisdiction are as follows:-

(i) The police have engaged in a secretive process of coaching the witnesses and coordinating their evidence in a way that contaminates their evidence. They have done so by organizing a session in which the two chief prosecution witnesses, Deborah Bastian and Jonathan Ash were summoned to a meeting in the presence of ASP Thompson, Sergeant 1877 Rolle (two police officers in charge of the case) and the witnesses' lawyers to discuss their evidence, exchange their accounts and be rehearsed as to what they should say and what they should omit to say in their statements and in evidence. All this has been audio recorded and the recording is available to the Court.

(ii) The said process has resulted in the contamination of both witnesses' evidence such that it would not be

possible for them to give spontaneous and independent evidence free of the process of contamination. The whole process offends the well-known principle that "discussion between witnesses should not take place and that the statements and proofs of one witness should not be disclosed to any other witness". This principle is well established in a series of cases and clearly enunciated in the leading case of **R v Momodou and another (2005) EWCA Crim 177.**

(iii) During the course of the coaching session between the police and the witnesses, the police deliberately instructed Deborah Bastian to put a false date on her statement and to date it as made on the 25th of July 2017 (see pages 10 to 12 of the second audio recording). This was to create the misleading impression that the statement had been made before the charge and arraignment of the applicat on the 3rd of August, 2017.

(iv) There also appears to have been serious and inexcusable non-disclosure of the contents of earlier interviews with the witnesses and earlier statements signed by them. It may even be that the records of these interviews and earlier statements have been destroyed. The consequence of such destruction would be irremediable prejudice to the fair trial of the applicant since it would not then be possible to put to those witnesses the contents of their earlier interviews and statements.

(v) Moreover, the police and the prosecution have repeatedly failed to disclose the fact of the meeting of ASP Thompson with the prosecution witnesses Bastian and Ash and their lawyers on the 25th September 2017 despite repeated requests by the defence for disclosure of all records of interviews between the police and the prosecution witnesses. This of itself involves grave misconduct and suggests that there has been non-compliance with the general duty of disclosure of all encounters between the police and the prosecution witnesses at which the contents of their evidence were discussed.

Short summary of the contents of the audio recording session of 25th, 27th And 30th September 2017.

4. The interview with the police was attended by the two chief prosecution witnesses, Bastian and Ash, their lawyers, Alecia Bowe (representing Ash), and Raymond Rolle (representing Bastian).

5. At the start of the session on the 25th September, 2017 the police indicated that they wished to coordinate the two accounts. They then caused first Ash, and then Bastian to give their accounts in front of each other, and to comment on each other's accounts. They then engaged in discussions and even disputes as to what they each said happened and rehearsed word for word their accounts in front of one another.

6. Ash's lawyer, Alicia Bowe, frequently intervened to seek to comment on the evidence of Bastian. There was an argument recorded at pages 18 to 19 about exactly what was said between the witnesses and Gibson in relation to the alleged offence of corruption. ASP Thompson frequently intervened to seek agreement and modification of evidence as to the sums involved (see for example pages 27 and page 31). The two lawyers commented extensively on the evidence of the witnesses they represented and how they should present it.

7. At page 35 ASP Thompson stated "so those errors in the statements I just clear up and then I'll invite you'll back just to sign because I need y'all to be synchronized with that".

8. At pages 36 to 38, Alicia Bowe, in the presence of the police officers, gave advice to both witnesses, and in particular Deborah Bastian, as to what evidence should be given and how it should be given in order to avoid the impression that the witnesses had "entrapped the Minister" (page 36). She also insisted that the statement should start at a particular point and omit background reference to the relationship between the witnesses, Bastian and Ash.

9. In the interview of the 27th of September, between Deborah Bastian and ASP Thompson, there is discussion of how to

edit the statement to leave out the word "coaching" (see pages 6 to 7).

10. In pages 10 to 11 of the Interview of 25th September, between Bastian and ASP Thompson, she was instructed to "change the date on her statement in line with the suggestions of ASP Thomson".

11. In the interview of 30th September, between Deborah Bastian and ASP Thompson the contents of her evidence was further discussed and ASP Thompson again gave suggestions as to what should be said. At page 9 of the interview of 30th September, ASP Thompson prompted Bastian to say things that chimed with the evidence of Ash and state: - " So I need you and him to be in sync with what happened here".

Conclusion

12. The history of this series of discussions between the police and the witnesses, and in particular the joint witness session of the 25th September 2017, is a catalogue of serious breaches of the proper method of taking statements. The witnesses were wrongly put together, wrongly invited to compare and synchronize their evidence, actually directed what to say at key passages, invited to discuss their evidence and its potential impact on the jury, and to avoid opening up issues for cross examination by the defence and expressly told to

mislead the court by putting in a false date for the statement of Deborah Bastian. This constitutes a course of conduct that makes the continuation of the prosecution an affront to the rule of law. Moreover, the whole process has so distorted and contaminated the evidence of the witnesses that it is impossible for the applicant to receive a fair trial.

13. The whole history means that the continuation of this trial will violate the applicant's constitutional right to a fair trial the protection of the law.

Edward Fitzgerald QC

14th August 2018

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

IN THE MATTER OF Articles 20(1), 20(2) (c) and 28 of the Constitution of The Bahamas

B E T W E E N

THE QUEEN

AND

DAVID SHANE GIBSON
Applicant/Defendant

AFFIDAVIT

No. 233/10/2017

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