**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT CRI/VBI/125/5/2017**

**Criminal Division**

**Between:**

**REX**

**VS**

**VICTORIA GIBSON**

**Before: The Honourable Mr. Justice Gregory Hilton**

**Appearance: Basil Cumberbatch along with Cashena Thompson for the Crown**

**Brenda Lee Rae for the Accused**

**Hearing Dates: 19th January, 2023**

**DECISION**

**[ Criminal Law-Notice of Additional Evidence – requirement of “Reasonable Notice”]**

**Hilton. J.**

1 The Accused Victoria Gibson is charged with the offence of Murder alleged to have occurred on 10th March, 2017.

She was arraigned in the Supreme Court on a Voluntary Bill of Indictment (VBI) filed on 18th May, 2017 and her original date for trial in April 2022 did not proceed and her trial was re-fixed for 16th January, 2023.

2. Prosecution and Defence Questionnaires were exchanged in Case Management hearings in 2021 and 2022 and at the Pre-Trial hearing on 12th January, 2023 both prosecution and Defence Counsel indicated that they were ready for trial.

3. Prior to the commencement of trial the Prosecution filed four (4) Notices of Additional Evidence on 4th January, 2023. On the day of trial on 16th January, 2023 after the Jury was empaneled, Counsel for the Accused advised the Court that she would be objecting to two (2) of the Notices of Additional Evidence filed on 4th January, 2023 on the basis that she had not been given “Reasonable Notice” as required by Section 166 of the Criminal Procedure Code.

4. The two (2) witnesses (with respect to the Notices of Additional Evidence) which the Defence objected to were:

a) Inspector Ezra Maycock and

b) Shaquille Wilmore

Neither of their names appeared on the back of the VBI as witnesses.

5. Ms. Rea objected to the introduction of the evidence of the two (2) witnesses on the basis that the “Notice” to have these witnesses give evidence was late and not Reasonable and their evidence was purely prejudicial to the Accused with no probative value.

6. Ms. Cashena Thompson for the Crown submitted that the Notices of Additional Evidence filed on 4th January, 2023 was reasonable and that the Counsel for the Accused made no objection or queries at the Pre-Trial hearing on 12th January, 2023 to their evidence being admitted during the trial. Additionally, Counsel produced a Notice of Additional Evidence document filed in the Criminal Registry on 7th January, 2022 for the witness Shaquille Wilmore, and submitted that the evidence that Inspector Ezra Maycock was expected to give was purely formal in nature as it related to the Accused’s declining to take part in an Identification Parade.

**7. Section 166 of the Criminal Procedure Code States;**

***“166. No witness who has not given evidence at the Preliminary Inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.***

***Such notice must state the witness’s name and give the substance of the evidence which he intends to give. It shall be for the court to determine in any particular case what notice is reasonable regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness’s evidence and decided to call him as a witness.***

***Provided that when, under the provisions of section 120 of the code, the plan of a survey or the report of a medical practitioner or analyst has been tendered at preliminary inquiry it shall not be necessary to the prosecution to give notice of the intention to call any such surveyor or medical practitioner or analyst as a witness at the trial of the information.”***

8. The Law requires that the Defendant receives Reasonable Notice in writing, having regard to the time when and the circumstances under which the Prosecution became acquainted with the nature of the witness’s evidence and decided to call him as a witness.

9. Counsel for the Accuses submits that the Defence is prejudiced by the late disclosure given the nature of the evidence and the seriousness of the charge.

10. Counsel for the Crown disputes that the Notice given is unreasonable for Shaquille Wilmore and that the time of the filing of the notice for Inspector Ezra Maycock, while not ideal, is also reasonable; As his proposed evidence is formal in nature and was foreshowed in the Witness Statement of Sgt. 2586 Evans, who is also a witness in the trial and no prejudice arises to the Accused.

11. I have considered the cases cited by both Counsel for the Accused and Counsel for the Crown.

I find firstly, that the Notice of Additional Evidence with respect to Shaquille Wilmore was neither late not unreasonable as it was a re-filing of a Notice originally filed on 7th January, 2022 (one year (1yr.) prior to the trial in January, 2023).

Secondly, that the Noticed of Additional Evidence with respect to Inspector Ezra Maycock (not withstanding it being filed twelve (12) days prior to the trial) is reasonable and it does not prejudice the Accused and additionally on the principle that ALL relevant evidence should be made available to the Jury. I will allow his evidence to be given in the trial.

12. Consequently, the objection by Counsel for the Accused to the Notices of Additional Evidence is overruled. The evidence of both witness will be allowed to be given in the trial.

**Dated the 20th Day of January, 2023**

**Gregory Hilton**

**Justice of Supreme Court**