

Commonwealth of The Bahamas

In the Supreme Court

Public Law Division

Claim No. 2024/PUB/con/00002

**In the matter of Article 19 and/or Article 28 of the Constitution of the
Commonwealth of The Bahamas**

B E T W E E N

ANTOINETTE MACKEY

1st Applicant

AND

ALVIN ANTONIO GLINTON

2nd Applicant

AND

THE COMMISSIONER OF POLICE

Respondent

Before: Her Ladyship The Honourable Madam Justice Cheryl Bazard KC
(Acting)

Appearances: Mrs. Shakeyra Dean Gibson for the Applicants
Mr. Randolph Dames for the Respondent

Hearing Dates: 13th May, 2025; 28th July, 2025 and 7th August, 2025 (Dealt with on
written submissions)

RULING

**Constitution – Fundamental rights and freedoms – Constitutional Motion seeking redress
for breach of fundamental rights – Whether contravention of fundamental rights – Right to**

retain and instruct without delay a legal representative of one's own choice and to hold private communication with him, Article 19(2) – Adequate means of redress, Article 28

BAZARD, J:

[1.] This is a Constitutional Motion seeking redress for breach of the First and Second Applicants' (hereinafter referred to as "Applicants") constitutional right pursuant to Article 19(2) of the Constitution to the right to retain a legal representative and to hold private communication with her. The Court received written legal submissions offered by Counsel for the Applicants and Respondent.

Background

[2.] The Applicants filed an Originating Notice of Motion on 24 January, 2024 seeking the following:-

- A. A Declaration that the rights afforded to the Applicants pursuant to Articles 19(2) and/or 28 of the Constitution of The Commonwealth of The Bahamas have or are about to be infringed;
- B. A Declaration that the time permitted for private communication between an Attorney and Client is not determined by any armed force or otherwise;
- C. A Declaration that a Licensed Attorney is not require (sic) to be a member of The Bahamas Bar Association nor have a Bar Association Identification to have private communication with a client;
- D. An Order that the proceedings in relation to the Applicants be permanently stayed and therefore discontinued; and
- E. Such further and/or other relief as the Honourable Court deems fit.

[3.] In support of the Application, the Applicants each filed an Affidavit on 24 January 2024. The Applicants also rely on Skeleton submissions dated 6 May 2025.

[4.] The Affidavits of PC 4491 Anton Butler and Detective Constable 4381 Ramon Adderley, both of 25 July, 2025, Detective Constable 4461 Terran Sweeting on 22 August, 2024 and ASP Keno Smith on 9 April, 2025, were filed on behalf of the Respondent. An undated Skeleton submission was also relied on by the Respondent.

The Notice of Motion

[5.] The Applicants, officers of the Bahamas Department of Immigration for Nineteen (19) years and Three (3) years of service respectively, at the time of the arrest, seek the determination of the following:-

Issues

[6.] The issues to be determined by the Court are:

1. **Whether or not the Applicants have the Constitutional right which they assert they have and,**
2. **Whether the Applicants' rights pursuant to Article 19 of the Constitution of the Commonwealth of The Bahamas ("the Constitution") have been or are likely to be violated, and**
3. **Whether the Applicants are entitled to Declaratory relief as a result of the alleged violation.**

Evidence

[7.] The 1st Applicant's evidence is found in an Affidavit filed on 24 January 2024. She avers in part the following:-

1. **"Both the 2nd Applicant and I were transported in separate squad cars to our home which was searched by police. Thereafter we were taken to the Grove Police Station and placed in separate cells;**
2. **A few hours later my Lawyer arrived and I was taken out of the cell and taken to an interview room.**
3. **A few minutes into speaking with my Lawyer an Officer opened the door and said "ya'll 15 minutes up I have work to finish", my Lawyer responded by saying "there is no time limit on how long I can speak to my client".**
4. **My Lawyer and I were escorted out of the interview room and the Officer took two gentlemen into the room.**
5. **The following morning I was taken out of my cell and again placed in the interview room for a few minutes with my Lawyer. I told the Officer at the Grove Police Station that I wanted my Lawyer to be in the interview room with me when I went to the Central Detective Unit ("CDU").**
6. **About an hour later Officers from CDU arrived, handcuffed me, and placed me in a squad car. I told them I wanted my Lawyer to be called, the request was denied.**
7. **When I arrived at CDU my Lawyer was seated in the front area of CDU. An Officer that was with me asked if that was my lawyer, I replied "yes". The Officer told my Lawyer to "come with us." Whilst we were passing through the door to go to the interview room the Officer asked my Lawyer for a Bar Association Identification. My Lawyer responded that she was not a member of the Association but was nonetheless an Attorney and began showing the Officer something else.**
8. **The Officer told my Lawyer that without her Bar Association identification she could not be in the interview. My Lawyer responded by saying, "if you keep me from being in the interview with my client you are violating her rights."**
9. **The Officer told my Lawyer to go back to the front. When my Lawyer left another Officer told me that she was not an Attorney and just wanted to take my money.**
10. **I was then taken into an interview without my Lawyer where I was questioned."**

Finding of facts

[8.] Having reviewed and considered the testimony of the Applicants, I shall provide my summary of their evidence.

[9.] During cross-examination, the First Applicant was questioned as to her meeting with her Lawyer, the following exchange took place:

“Q: This happened on 6 January, 2024?”

A: Yes.

Q: Do you remember the interview room?

A: Yes.

Q: In the interview room was there a desk?

A: Yes.

Q: Chair?

A: They brought a chair for me to sit.

Q: Did it have a door?

A: There was a glass door. You can see through the door.

Q: Was the door closed or opened when your lawyer was talking to you?

A: The door was half closed and the Officer was standing there.

Q: But you and your lawyer were the only persons in the interview room?

A: An officer was standing at the door and standing halfway in. In 2 minutes he said I had to go back to my cell. I had no chance to speak to my lawyer.”

[10.] The First Applicant then corrected herself to say this happened on 7 January, 2024 and not 6 January, 2024.

[11.] The First Applicant was then shown her detention record. The reason for the arrest and her rights pursuant to Article 19(2) of the Constitution were pointed out to her, and she acknowledged her signature beneath this information.

[12.] The First Applicant was then shown the 4th entry in the Detention Record dated 7 January, 2024 and made at 10:20 a.m. The 4th entry reads:

“Suspect was taken out of cell and allowed private communication with Attorney Shaketra (sic) Dean-Gibson. She appeared well and had no complaints.”

[13.] The First Applicant was then shown the 5th entry in the Detention Record. The 5th entry reads:

“WPC 4092 Carey placed suspect back into the cell. She appeared well and had no complaints.”

The entry is timed at 10:50 a.m.

[14.] The First Applicant vehemently insisted that her communication was not private and that it was not for at least one-half hour but only 2 minutes. She was also shown her record of interview dated 7 January, 2024. At Q2, she was asked,

“Do you wish to have a lawyer present.”

The answer at A2, “No.”

[15.] When asked by Counsel on cross examination whether she understood the caution, the First Applicant responded,

“I understand everything. I am not dumb. They lie. Our lawyer was there. I know because I studied law. They could write anything.”

[16.] Both Applicants have been charged with possession of an unlicensed firearm and ammunition only. There was no charge of possession of counterfeit currency.

[17.] The Second Applicant’s evidence is found in an Affidavit filed on 24 January, 2024. He avers in part the following:-

“8. We were both arrested and taken by the officers to our ho,e (sic) which was searched and thereafter to the Grove Police Station.

9. After a few hours at the station my Lawyer Shakeyra Dean Gibson arrived and we were placed into an interview room to speak. After a few minutes together an Officer on duty entered the room and said “Ya’ll only have a few minutes to talk because the station has to run and staff is short.”

10. My Lawyer spoke with me quickly and thereafter I was returned to the cell.

11. Later that evening Officers from the Central Detective Unit (“CDU”) came to the Grove Police Station, removed me from the cell and said they came to investigate me.

12. I responded by asking to contact my Lawyer, and my request was refused. I was handcuffed, placed in a car and transported to CDU.

...

15. The following morning, on the 7th January 2024, Officers from CDU came back to the Grove Police Station. Before we left, I requested to call my Lawyer to have her in the interview room with me. My request was again refused.

16. I was taken to CDU and interviewed for a second time without the presence of my Lawyer, despite making the request.”

[18.] In cross-examination, the Second Applicant stated:

"I was arrested at Valu Plus. They told me why I was arrested. There was no other person in the interview room. There was no speaker or microphone in the room. There was no recording. The door was closed. Only me and the lawyer was in the room. The incident happened on 6 January, 2024. The interview with my lawyer was on the 6 January, 2024. I do not remember the time."

[19.] The Second Applicant was then shown his Record of Interview relative to the questioning of the firearm. The Record of Interview informed that the interview began at 7:00 p.m. and ended at 7:43 p.m.

[20.] At Q2 of the interview, the Second Applicant was asked, "Do you wish to have a lawyer present?" The answer was, "No." In cross-examination, the Second Applicant stated that the record of the interview says no, but he said yes.

[21.] The Second Applicant was then shown his record of interview with respect to questioning on the counterfeit currency. This record was dated 7 January 2024 and shows a start time of 10:37 am and conclusion at 11:03 a.m. At question 2, he was asked, **"Do you wish to proceed without a lawyer present?"** His answer, **"Yeah, you could do it without a lawyer."**

[22.] The Second Applicant was then shown his detention record. In the entry made at 7:00 pm on 7 January, 2024, it is noted that **"Shakeyra Dean Gibson came and spoke to Calvin Ginton in private. His lawyer was allowed to speak to him. He appeared to be well."**

The Case for the Respondent **PC Anton Butler**

[23.] Police Constable Anton Butler in his evidence noted that the Attorney saw the First Applicant on 7 January at the Grove Police Station. The interview started at 10:20 a.m. and ended at 10:50 a.m.

[24.] The First Applicant signed the Detention Record acknowledging that she was informed of her right pursuant to Article 19(2) of the Constitution. The same was exhibited as AB1 and was acknowledged by the First Applicant in cross-examination.

[25.] The detention record dated 7 January, 2024 shows that the First Applicant was interviewed on that date between 11:56 a.m. and 12:36 p.m. She denied the allegation. At 12:43 p.m., the First Applicant spoke with her Attorney and was again interviewed between 1:07 p.m. and 1:40 p.m.

[26.] The First Applicant made no admission to any of the allegations.

Detective Constable 4381 Ramon Adderley

[27.] Detective Constable Adderley was the investigating officer and he interviewed the Second Applicant on 7 January, 2024 at about 10:37 a.m.

[28.] He also interviewed the First Applicant in the presence of her lawyer on 7 January, 2024. The lawyer reviewed the record of interview but did not sign it. This interview lasted from 1:07 p.m. to 1:40 p.m.

[29.] These interviews were in relation to the charge of possession of counterfeit currency. Neither of the Applicants was charged with this offence, and so these interviews are of no consequence to the matter at hand.

Detective Constable 4661 Terran Sweeting

[30.] Detective Sweeting was also an investigator and was the police officer who denied the access of the lawyer to the Second Applicant. In his evidence, he noted:

"If Mrs. Dean Gibson provided proper identification, she would have been allowed to see the 2nd Applicant."

[31.] Detective Sweeting stated that, **"A reason for denying her access at that time was to prevent individuals from impersonating legal representatives, which could compromise security or obstruct an investigation."**

[32.] He referenced an incident involving Roneika (sic) Russell using a fraudulent Bahamas Bar Association identification at The Bahamas Department of Correctional Services ("BDOCS").

[33.] On 6 January 2024, at 7:00 p.m., the Second Applicant admitted to the offence of possession of a firearm and ammunition.

[34.] On 7 January, 2024 at 10:37 a.m., the Second Applicant again was interviewed and admitted to the offence.

[35.] Detective Sweeting was clearly ignorant of the Second Applicant's right to hold private communication with Counsel as well as there being no obligation on the part of a licensed attorney to have a Bahamas Bar Association identification.

The Law

[36.] **Article 19(2) of the Constitution states:-**

"(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention and shall be permitted, at his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him..."

[37.] Therefore, the Constitution asserts the existence of the right claimed.

[38.] Sawyer, P., as she then was in **Merson v. Cartwright et. al.** BS 1994 SC 57 stated:

"It seems to me that the use of the phrases "shall be permitted" and "instruct without delay" mean that the police are to do nothing to impede an arrested person from consulting and instructing counsel of the arrested person's choice nor are they to intrude on any conversation, meeting or interview counsel may wish to hold with his arrested client."

[39.] Pursuant to section 14 of the Legal Profession Act,

"Every person admitted to practice other than a person specially admitted is entitled to receive from the Registrar a certificate of enrolment under the seal of the Court."

[4.] In **The Bahamas Bar Council v. Shavon Bethel** SCCivApp. No. 326 of 2013, it was held that:

"It is to be noted that there is nothing in the Legal Profession Act or in the regulations made under that Act that obliges the Bar Council to give its members a Certification

of Good Standing or an Identification Card which confirms that a person is a member of the Bahamas Bar.”

Discussion and Analysis

Issue No. 1: Whether or not the Applicants have the Constitutional right which they assert to have, and whether their rights have been breached?

[41.] The Applicants have submitted that the Respondent’s agents’ failure to grant access to an attorney resulted in the said breaches of their constitutional rights.

[42.] Mrs. Dean Gibson and Mr. Dames in their written submissions identified and relied upon numerous authorities in support of their respective assertions and contentions regarding the right of an arrested or detained person to hold private communication with their attorney.

[43.] The Court at the outset note that Counsel for the Applicants at paragraphs 7 through 10 and 12 of her submission stated that the Applicants were able to retain Counsel and did have private conversations with the Applicants; albeit, in her estimation, the time for the same were *“inappropriate and unreasonable.”*

[44.] In addition to **Article 19(2) of the Constitution**, Counsel for the Applicants also made reference to the Police Force Standing Orders and in particular paragraph 17 of Section C4. The said paragraph reads:-

“Rights of Persons in Custody

17. In accordance with Article 19 of The Constitution of The Bahamas, a person who is arrested or detained has the following fundamental rights and all officers will ensure that such persons are given an opportunity (emphasis added) to exercise those rights, namely:

(1) To be informed as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(2) At his own expense, to retain and instruct without delay a legal representative of his own choice and to hold private communication with him.”

[45.] Counsel for the Applicants relied on **R. v. Bartle [1994] 3 SCR 173**. The points in issue were peculiar to the information component of s. 10(b) of the Canadian Charter which *“...require that police routinely refer to the existence and availability of a 24-hour duty counsel service which provides free preliminary legal advice and can be reached by dialing a 1-800 (toll-free) telephone number.”* There is no such obligation in the Constitution nor the Police Force Standing Orders and is therefore distinguishable from the case in hand.

[46.] At page 195 of *Bartle*, the Court in quoting *Bridges* [1990] 1 S.C.R. 190 noted,

“...the right to retain and instruct counsel, in modern Canadian (emphasis added) society, has come to mean more than the right to retain a lawyer privately. It now also means the right to have access to counsel free of charge where the accused meets certain financial criteria set up by the provincial Legal Aid plan, and the right to have access to immediate, although temporary, advice from duty counsel irrespective of financial status. These considerations, therefore, lead me to the conclusion that as part of the information component of s.10(b) of the Charter, a detainee should be informed of the existence and availability of the applicable systems of duty counsel and Legal Aid in the jurisdiction, in order to give the detainee a full understanding of the right to retain and instruct counsel. [Emphasis added].”

[47.] Counsel for the Applicants also made reference to *Shavargo McPhee v. R.* [2016] UKPC 29. (“McPhee”) In that case, McPhee was a minor; he was not represented by a lawyer at any stage. McPhee is therefore distinguishable from the facts of this case and does not assist the Applicants.

[48.] The Court adopts the dicta in *Terrence Thornhill v. Attorney General of Trinidad and Tobago* (1974) 27 WIR 281 at page 286,

“It would appear to me that so soon as a person is arrested he must promptly be told of the reason for his arrest and thereafter be allowed without delay to instruct a legal adviser of his choice and hold communication with him. The phrase ‘without delay’ must be given some meaning. It certainly cannot mean at the convenience of the investigator or some time before trial or at the stage at which definable rights could be won or lost. I am satisfied, therefore, that the right referred to in the Constitution is a right which arises immediately after arrest and that the opportunity to exercise the right should be afforded without delay.”

[49.] The Court continued at page 287,

“It is instructive to note that Gerald Abrahams in his booklet *Police Questioning and the Judges’ Rules* (1964 Edn.) at p 40 states that the principle that one should be able to communicate and consult privately with a solicitor at any stage of an investigation even if one is in custody, was a right which existed at common law.....I am of the view that it is a right which in course of time has developed within the common law.”

[50.] Further,

“The suggestion that any detective or other police officer is justified in preventing or attempting to prevent a prisoner from conferring with his client is a most shocking one. The suggestion that counsel, if he is permitted to confer with his client who is in

custody, might thereby obstruct the police in the discharge of their duties is even more shocking. The prisoner is not obliged to say anything and the lawyer is entitled to advise him of that right.

The lawyer is an officer of the court and it is the function of the courts to administer justice according to law. To prevent an officer of the court from conferring with the prisoner who in due course may appear before it, violates a right of the prisoner which is fundamental to our system of administration of justice.”

[51.] It should be pointed out that no information was elicited from the First Applicant prior to her communication with Counsel at the Grove Police Station. The Record of Interview for the First Applicant was on 7 January, 2024 beginning at 11:56 a.m. and concluding at 12:36 p.m. From the First Applicant’s Detention Record, on 7 January, 2024 she had a private communication with her attorney beginning at 10:20 a.m. and ending at 10:50 a.m.

[52.] The Second Applicant’s Record of Interview vis-à-vis the firearm offence began at 7:00 p.m. and ended at 7:43 p.m. on 6 January 2024. He was again interviewed on 7 January, 2024, from 10:37 a.m. until 11:03 am. It is noted that he admitted to the offence. At 9:20 a.m. on 7 January, 2024, the Attorney was allowed to speak with the 2nd Applicant. It should be pointed out that the Second Applicant’s Detention Record relative to Article 19(2) of the Constitution is not signed.

[53.] The Court is satisfied that the constitutional right of the Second Applicant to consult with and instruct Counsel of his choice was infringed. The same occurred on at least the two occasions mentioned *supra*.

Alternative Means of Redress

[54.] Article 28 of the Constitution provides:-

“(1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being, or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction –

(a) To hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled.:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law” (Emphasis added).

[55.] **Section 178 of the Evidence Act** gives a judge the power to exclude evidence on which the prosecution proposes to rely to be given if it appears to him that having regard to all the circumstances; including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. The question then is whether the constitutional application seeks to usurp the function of the Magistrate and is premature in nature.

[56.] In *McPhee*, the Board pointed out that:-

“A breach of proper practice does not necessarily result in unfairness such as to justify exclusion; it must be judged in the context of all the circumstances, foremost amongst which are its gravity and its consequences. A deliberate or reckless breach is plainly more serious than an accidental one.”

[57.] In *Simmons et. Al. v. R.* BS 2004 CA 4, Sawyer, P. as she then was, at paragraph 33 noted:-

“It is sufficient to say that in our judgment, an arrested person has the right, under Article 19(2) of the Constitution, to be informed by the police of his right to consult Counsel and to exercise that right before being interrogated by the police. That view has now been put beyond peradventure by the decision of the Privy Council in the case of *Mohammed v. The State* [1992] 2AC 111. That was a decision in respect of the Constitution of the Republic of Trinidad and Tobago and is, in or view, equally applicable to the provisions of Article 19(2) of the Constitution of The Bahamas.”

[58.] At paragraph 34 of *Simmons*, the Court continues:-

“Mr. Ducille submitted that in light of the view expressed obiter by Georges, J. in *Thornhill v. Attorney General of Trinidad and Tobago* (1927) 27 WIR 281 that the denial of the right to consult Counsel ought to be sanctioned by the exclusion of evidence obtained as a result of the denial of the constitutional right to consult counsel, that this Court ought to reverse the learned judges’ decision.”

[59.] At paragraph 35 of *Simmons*, the Court continued:-

“In *Thornhill’s* case, cited above, Georges, J., was dealing with a constitutional motion. Part of the remedy claimed in that motion was the exclusion of confessions obtained in breach of the appellant’s right to be informed of his right to consult counsel and to hold private communication with such counsel. At page 289f of the report, Georges, J. said this: “Different considerations apply to the relief claimed in paragraphs 2 and 3 of the notice of motion. I am satisfied that the weight of authority precludes me from holding that the denial of the right to instruct counsel or to consult with him inevitably makes statements taken during that period inadmissible or

otherwise renders null, void, illegal and unconstitutional, all statements taken from the applicant while he was in custody.” (Emphasis supplied).

36. That decision was upheld by both the Court of Appeal of Trinidad and Tobago as well as the Privy Council.

37. In the later case of Mohamed v. The State [1992] AC 111, Lord Steyn, with whom the other Law Lords agreed, at page 124 – 125 said this: “...On the other hand, it is important to bear in mind the nature of a particular breach.....the constitutional provision requiring a suspect to be informed of his right to consult a lawyer, although of great importance, is a somewhat lesser right and potential breaches can vary greatly in gravity. In such a case not every breach will result in a confession being excluded. But their lordships make clear that the fact that there has been a breach of a constitutional right is a cogent factor militating in favour of the exclusion of the confession. In this way the constitutional character of the infringed right is respected and accorded a high value. Nevertheless, the judge must perform a balancing exercise in the context of all the circumstances of the case.”

[60.] Based on the facts at hand and the timeline of events as it relates to the Second Applicant, it is clear that there is no evidence to show that he was made aware of his right to Counsel. Further, his interrogation occurred prior to his private communication with Counsel.

[61.] The question for the Court, therefore, is whether there is a causal link between the conduct of the police and the Second Applicant’s decision to make the confession.

[62.] In R. v. David Shane Gibson BS 2019 SC 26, it was held that that applicant’s constitutional rights were not threatened and his complaints were such as could be properly addressed in the ordinary process of a criminal trial. The proviso to Article 28 was applied. At paragraph 37 of Gibson, Charles J, as she then was, noted:

“[37] The law in relation to abuse of process has been recently considered by the House of Lords in R v. Maxwell [2010] U.K.S.C. 48 and by the Privy Council in Warren v. Attorney General for Jersey [2011] U.K.P.C. 10, [2011] 2 All E.R. 513. The general approach was set out by Lord Dyson at paragraph [13] of Maxwell.

“It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will ‘offend the court’s sense of justice and propriety’ (per Lord Lowry in R v. Horseferry Road Magistrates’ Court, Ex p Bennett [1994] 1 A.X. 42, 74 g) or will ‘undermine public confidence in the criminal justice system and bring it into disrepute’ (per Lord Steyn in R v. Latif [1996] 1 W. L. R. 104, 112 f).”

[63.] This court repeats paragraph 73 of **Gibson**:

"[73] The jurisdiction to quash an indictment or to order a stay of proceedings on the basis of an abuse of process at common law is not in doubt. However, it is settled that this discretionary power should be sparingly exercised and employed only in exceptional circumstances. This power would not be appropriately exercised where the perceived unfairness can be cured within the trial process: A.G. Reference (No. 1 of 1990) [1992] 1 Q.B. 630 at 643."

[64.] The Court finds that there is nothing in the Witness Statements or the Record of Interview that suggests impropriety on the Second Applicant to induce his admission. In fact, at the scene, prior to the arrival of the First Applicant, the Second Applicant stated to Superintendent Keno Smith,

"That (sic) mines (sic) it for my protection niggas just try shoot me."

[65.] I wish to reiterate that the Court finds that the Second Applicant was not advised of his right pursuant to **Article 19(2) of the Constitution**, but any potential prejudice to the Second Applicant can be dealt with at the criminal trial.

CONCLUSION

[66.] The motion of the Applicants is granted in part.

[67.] Considering the evidence before it and the relevant submissions of Counsel, the Court makes the following findings:-

1. The right afforded to the First Applicant pursuant to Article 19(2) of the Constitution has not been infringed;
2. The right afforded to the Second Applicant pursuant to Article 19(2) of the Constitution has been infringed

[68.] In all the circumstances, the Court refuses the Application to have the proceedings in relation to the Applicants permanently stayed and discontinued.

[69.] The parties will bear their own costs.

[70.] I wish to record my gratitude to Counsel on both sides for their patience with my laborious note-taking of the evidence by hand and which I tried to record as accurately as possible.

[71.] Therefore, the Court hereby DECLARES:-

- A. The right afforded to the First Applicant pursuant to Article 19(2) of the Constitution has not been infringed.
- B. The right afforded to the Second Applicant pursuant to Article 19(2) of the Constitution has been infringed.
- C. The time permitted for private communication between an Attorney and Client is not arbitrarily determined by any armed force or otherwise;
- D. A Licensed Attorney is not required to be a member of The Bahamas Bar Association nor have a Bar Association Identification in order to have private communication with a client.

Dated the 11 day of August, A.D., 2025


Acting Justice Cheryl Bazard KC