

COMMONWEALTH OF THE BAHAMAS

VBI NO. 155/6/2024

IN THE SUPREME COURT

Criminal Division

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

HERMAN MAJOR JR.

Defendant

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mrs. Ashley Carroll for The Director of Public Prosecutions
Mrs. Joyce Cooper-Bowe for the Petitioner

Hearing Dates: 19 and 26 March 2026

RULING

HANNA-ADDERLEY, J

Introduction

[1.] The Accused Herman Major Jr., is charged with 1 Count of Rape and 1 Count of Causing Harm alleged to have been committed on 30 January 2023. He was arraigned in the Supreme Court on 6 March 2025 on a Voluntary Bill of Indictment (“**the VBI**”) on 17 June 2024. A trial date was set at the time for 13 through 24 April 2026. At arraignment the Defendant appeared Pro Se and requested that a Defence Counsel be appointed for him. The matter was adjourned to 1 May 2025 for a Case Management Conference and to 17 July 2025 for a Pre-Trial Review.

[2.] Mrs. Joyce Cooper-Bowe was appointed by the Court to represent Mr. Major Jr. on 22 May 2025.

[3.] At the Case Management Conference held on 1 May 2025, before Mrs. Cooper-Bowe was appointed, the matter was further adjourned to the Pre-Trial Review date of 17 July 2025 because no Defence Counsel had been appointed by the Court.

[4.] On 17 July 2025 the matter could not proceed because the Accused had not been transported to Grand Bahama by the Prison authorities for the hearing. It was adjourned to 9 October 2025.

[5.] On the 9 October 2025, with all parties present, the Crown was ordered to complete the Discovery process on or before 1 December 2025 and the Accused was ordered to file and serve his Defence Statement by the same date set for the Pre-Trial Review.

[6.] On 1 December 2025 the matter did not proceed because as the Accused was not transported to Grand Bahama by the Prison authorities for the Pre-Trial Review. The matter was adjourned to 12 December 2025.

[7.] On 12 December 2025 the matter was further adjourned to 16 March 2026 and finally to 19 March 2026 at 10:00 a.m.

[8.] On 25 February 2026 the Crown filed a Notice of Additional Evidence to call Forensic Analyst Kirk DeLeeuw. The attached Report pertains to evidence screening for vaginal swabs from the Virtual Complainant and bloodstain cards from the Virtual Complainant and the Accused received by DNA Labs International on 6 November 2025. The activity associated with this Report began on 21 January 2026.

[9.] On 4 March 2026 the Crown filed a Notice of Additional Evidence to call D/Sgt 2804 Donovan Gibson as a witness. On 1 February 2023 Gibson received a completed Royal Bahamas

Police Force Request for Analysis Form and a sealed Rape Kit in the name of the Virtual Complainant, which he delivered to the Royal Bahamas Police Force Scientific Support Services on 2 February 2023 to Ms. T. Culmer.

[10.] The only witnesses for the Crown on the back of the VBI are:

Virtual Complainant

Tara Jones

Dr. Vermie Jean Florendo

Sgt. 1202 Keith Russell

D/Con. 4304 Johnathan Russell

D/Con. 4260 Juwan Rigby

D/Sgt. Mario Rahming

D/Insp. Ramando Russell

D/Sgt. 3448 Daryl Rolle

WDC 3802 Ashley Rollins

Officer Gibson is a Crime Scene Investigator and Police Photographer. It is alleged in his attached report dated 2 February 2023 that he collected a completed Royal Bahamas Police Force Request for Analysis Form and a sealed rape kit from D/Con. 4304 Russell. He delivered the rape kit to Ms. T. Culmer at the Royal Bahamas Police Force Scientific Support Services, Nassau, The Bahamas.

[11.] On 10 March 2026 the Crown filed the following Notices to adduce additional evidence calling as witnesses:

- 1) Forensic Biologist Shanell Sands who on 17 August 2023 received from Constable 4203 Stubbs certain biological samples. The report is dated 10 March 2026.
- 2) Technician Tiffany Culmer who on 2 February 2023 received from Gibson certain biological samples. Her report is dated 10 March, 2025.

[12.] Also on 10 March 2026 the Crown made application for the following persons to give evidence via video link:

- 1) DNA Analyst Kirk Deleew

- 2) Exhibit Technician Tiffany Culmer
- 3) Forensic Biologist Shanell Sands
- 4) Inspector Ramando Russell

Inspector Russell's name is on the back of the VBI. Mr. Deleeuw intends to tender expert DNA evidence. Ms. Sands and Ms. Culmer are referred to above.

[13.] On 25 March 2026 the Crown filed applications to adduce evidence by video link by D/Corp. Newton Missick (Abaco) and Exhibit Technician Savanna Stubbs (New Providence) who are not currently working in Grand Bahama.

[14.] On 25 March 2026 the Crown filed an Application to Adduce Evidence by Way of Video Link for DNA Analyst Kirk Deleeuw (USA), Ms. Tiffany Culmer (New Providence), Ms. Shanell Sands (New Providence) and D/Inspector Ramando Russell (Abaco), who are not currently working in Grand Bahama.

[15.] On 25 March 2026 the Crown filed Notices of Additional Evidence for the following:

- 1) Corp. 3690 Newton Missick Jr. of Criminal Records Office, who from his report dated 2 February 2023 collected from Dr. Kemp at the Accident and Emergency Department of the Rand Memorial Hospital certain biological specimens belonging to the Accused and transported them to Criminal Records Office, packaged and labelled them for transport to Forensic Laboratory in New Providence for further analysis.
- 2) Technician Savana Stubbs whose report date 24 March 2026 stated that on 13 March 2023 she received from D/con. 4294 Jones certain biological samples or specimens in relation to the Virtual Complainant and handed same over to Forensic Biologist Assistant Superintendent Shanell Sands for examination.
- 3) D/Con. 4293 T'Rohn" Jones who from his report date 13 March 2023 was attached to Criminal Records Office and Police Photographer when he, on 12 March 2023 collected from D/Cpl. 3690 Missick a sealed exhibit bag and Royal Bahamas Police Force Request for Analysis for and biological specimens in connection with the Accused. He took the items to the Royal Bahamas Police Force Forensic Scientific

Support Services in New Providence where he handed the same over to ASP R. Francis and D/Con. 4203 Stubbs for further investigation.

Submissions

[16.] At final the Pre-Trial Review on 19 March 2026 Mrs. Cooper-Bowe advised the Court that she was objecting to the Applications to Adduce Additional Evidence by the Crown. She submitted that Discovery ought to have taken place on or before 1 December 2025. That it was on that basis that the trial date was set. The Prosecution ought not to be permitted to adduce additional evidence at this late stage. The Defendant was caught by surprise. The additional evidence is DNA. The Police have been in possession of it for 3 years and was just disclosing it. The Defendant would be prejudiced by the late admission of evidence.

[17.] Mrs. Ashley Carroll Counsel for the Crown submitted that the Accused was arraigned on 6 March 2025 and that that was when the trial date was set down for 13-24 April 2026. On the 9 October 2025 Defence Counsel indicated that there were still disclosures outstanding by the Prosecution such as surveillance footage, scenes of crime photos and recordings of the Record of Interview. Mrs. Carroll pointed out that on the 9 of October neither the Defense Counsel nor the Prosecution were ready for trial, on that date. That the Prosecution still did not have the Defence Statement. Mrs. Carroll also pointed out that the Case Management Order was never perfected. That because that order was not perfected, it can be amended.

[18.] Mrs. Carroll outlined all of the documents filed by the Prosecution which the Crown now seeks to be adduced into evidence set out above. She submitted that the Crown was relying on Section 166 of the Criminal Procedure Code (“**the CPC**”). That the Crown is relying on the recent Supreme Court case of **Rex v Victoria Gibson** CRI/BBI/125/5/2017, where Hilton, J, as he then was, considered that the additional evidence should be admitted notwithstanding it was late and neither of the witnesses to be called were on the back of the VBI. Justice Hilton held that the law requires that the Defendant received reasonable notice in writing having regard to the time when and circumstances under which the Prosecution became acquainted with the nature of the witness’ evidence and decided to call him as a witness. He further held that the notice in this case was reasonable and he stated that it did not prejudice the accused and additionally, on the principle that

all relevant evidence should be made available to the jury he allowed the evidence to be given in the trial.

[19.] Mrs. Carroll further relied on the Court of Appeal case of **Stephen Anthony Greene vs Regina** SCCrApp. No. 124 of 2015 where the Appellant laid out 6 grounds for his appeal including ground No.2, where he said the presiding Judge allowed the Crown to adduce evidence from the additional witnesses not listed on the back of the VBI, which he claimed was unfair to him. In respect of three of these witnesses, the Crown sought to call them due to allegations by the accused that the Record of Interview was signed as a result of police brutality. Following the voir dire, the two officers and the doctor were called in respect of those allegations. Additionally, another witness was called who was an employee of Integrated Commercial Services Agency that operates the electronic monitoring system. That the witness gave evidence that placed the Appellant in the vicinity of where the crime was alleged to have taken place. The Prosecution submitted that they had given reasonable notice of the evidence to be adduced by the various witnesses as required by Section 166 of the CPC and had neither ambushed, nor had it taken the other side by surprise. More importantly, Mrs. Carroll stated, the accused had suffered no prejudice or unfairness. Simply put, the test for Section 166, is whether reasonable notice has been given.

[20.] Madam Justice Crane-Scott delivered the judgement and at paragraph 31 stated, "*Having reviewed the appellant's complaints regarding the admission of the evidence of the four additional witnesses, I am satisfied that no unfairness to the appellant was occasioned by the Judge allowing the evidence of these four witnesses to be adduced by the Crown.*" At paragraph 33, Madam Justice Crane-Scott in respect of the first 3 witnesses continued, "*A notice that these three witnesses would be called as witnesses for the prosecution was duly given to the appellant in the accordance with Section 166 of the CPC; in any event, the appellant was aware that they would be called prior to his arraignment and the commencement of the trial...*" At paragraph 35 she continued, "*that Notice of Additional Evidence in relation to the evidence to be adduced from Shanite Barry had been given to the appellant as required by section 166 of the CPC on the morning of 6th of February, 2015. The record also confirms that on 6th of February, 2015 (which is full five (5) days prior to the 11th of February, 2015 when Shanite Barry was called to testify before the jury) the appellant had also been in possession not only of the relevant*

tracking report covering the period of the robbery in the morning hours of the 13th December, 2012 to be relied on by the Crown, but also of a second tracking report (which he had specifically requested) covering the time frame between 10 p.m. of 14th December, 2012 and the morning hours of the 15th December, 2012. I am therefore satisfied that the statutory requirements for the calling of the additional witnesses, Shanite Barry, were also complied with, that the appellant was given reasonable notice of the evidence to be adduced from her and that no prejudice or unfairness to the appellant occurred during the trial.”

[21.] Mrs. Carroll submits that it is trite law that the Court has a discretion both at Common Law and under Section 178 of the Evidence Act to refuse evidence if the Court is satisfied that it would be unfair and not in the interest of justice to admit the evidence. It is acknowledged by the Crown that Notice of Additional Evidence was served late, but it is submitted that reasonable notice has been given and this clearly not a trial by ambush or surprise. It is submitted that over a month is sufficient time for the Defense Counsel to take instructions and prepare a defense. It is further submitted that the Crown has a duty to ensure all of the relevant evidence is made available to the jury again, relying on the case of **Rex v Victoria Gibson (supra)**. The Defense Counsel was given 5 days notice and the Court of Appeal held that was reasonable notice in those circumstances. Previously, Defense Counsel had 2 weeks notice. In this case, there was at least 5 weeks prior to the trial commencing when the Defense Counsel was served with the Notice of Additional Evidence.

[22.] Another question the Court is asking is when did the Crown become acquainted with this material. Mrs. Carroll submitted that the Court would also look at the dates of those Reports. The Biologist, ASP Sands, her report was dated 10 March, and it was duly served the same date. Exhibit Officer Tiffany Culmer's report was dated 10 March, they were all served on the 11 March 2026. The DNA Analyst, Kirk DeLeeuw, his report was dated 6 February and it was duly served once the Crown came into possession of it. There was no surprise or intent of trial by ambush, and the Crown has complied with the statutory requirements as relates to the Notice of Additional Evidence.

[23.] Mrs. Carroll further submitted that there is no unfairness should the additional evidence be admitted, as Defense Counsel has appropriate time to review the material and would be given an opportunity to cross examine each witness. That having regard to the aforementioned, it is in the interest of justice that the additional evidence which the Crown seeks to introduce should be allowed in the upcoming trial and it would not be unjust to allow same. And in regards to the arguments that it would prejudice the defense, the Crown has a duty to disprove any defense that is put forward and that evidence is needed for the Crown to meet this requirement.

Analysis and Discussion

[24.] Section 166 of the CPC 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 this Code, the plan of a surveyor or the report of a medical practitioner or analyst has been tendered at the preliminary inquiry it shall not be necessary for the prosecution to give notice of the intention to call any such surveyor, medical practitioner or analyst as a witness at the trial of the information.

[16.] The law requires that the Accused 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 witnesses evidence and decided to call them.

[17.] Mrs. Cooper-Bowe's objection is essentially that it is too late to adduce this evidence. That the Prosecution had some of this evidence for 3 years, since 2023, and failed to turn it over during the discovery process.

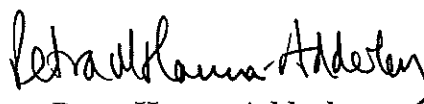
[18.] The Crown essentially argues that although the Notices were filed late the Notices were filed and served in some cases in excess of 1 month before trial, and this still provided the Accused with reasonable Notice. That the Crown has a duty to make all evidence available to the jury. That no prejudice or unfairness will be suffered by the Accused, who will have an opportunity to cross-examine the witnesses.

[19.] I have considered the case law relied upon by the Crown.

[20.] I accept that, although late, the trial date being almost a month away from discovery of the Reports in some cases and 2 weeks away in others that the Accused had or has reasonable notice of the same. I also accept that the Accused will have sufficient time to prepare for the cross-examination of the witnesses who, as primarily argued by Mrs. Carroll, relate to the chain of possession of the biological evidence herein taken from the Virtual Complainant and the Accused. The witnesses are mainly police officers save the foreign DNA expert whose Report has been disclosed. I therefore do not accept that the Accused will be prejudiced by the late discovery of the Reports and intended evidence, or the request that certain witnesses give evidence via video link. Finally, I accept that the overriding principle that all the relevant evidence should be turned over to the jury applies.

[21.] The objection by Counsel for the Accused to the Notices of Additional Evidence is overruled. The evidence of all of the mentioned intended Witnesses will be allowed to be given at trial in person or by video link where requested.

Dated this 26th day of March, A. D. 2026


Petra Hanna-Adderley
Judge