

COMMONWEALTH OF THE BAHAMAS CASE NO. VBI/7/1/2025

IN THE SUPREME COURT

Criminal Division

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

V

MICHAEL JOHNSON, B’JORN FERGUSON and DEANGELO ROLLE

BEFORE: The Honorable Mr. Justice Dale Fitzpatrick

**APPEARANCES: Mr. Damien Gomez KC and Ms. Tai Pinder on behalf of B’jorn
Ferguson**

**Mr. Terrance Williams KC, Mr. Terry Archer and Ms. Cashena
Thompson on behalf of the Prosecution**

Heard on the Papers

**Criminal Law – Evidentiary Hearing Before Trial – Whether Voice Recording Evidence
Should Be Excluded For Non-Compliance with the Evidence Act - Whether Voice
Recording Evidence Should Be Excluded For Lack of Authentication and Probative Value**

Decision

FITZPATRICK J

Introduction

[1.] B’jorn Ferguson (the “Applicant”) is a former officer in the Royal Bahamas Police Force (“RBPF”) who was at the time of these allegations a defence lawyer. He is charged by Voluntary Bill of Indictment filed by the Director of Public Prosecutions (“DPP”) on January 29, 2025 (“VBI”) with one count of Conspiracy to Commit Bribery contrary to section 89(1) of the *Penal Code* and section 3(1)(a) of the *Prevention of Bribery Act*. The Applicant, along with Michael Johnson, is also charged with one count of Accessory After the Fact to the Offence of Conspiracy to Commit Stealing contrary to sections 88A(3)(b), 89(1) and 345 of the *Penal Code*.

[2.] Michael Johnson is an officer in the RBPF who held the rank of Chief Superintendent and officer in charge of the Criminal Investigations Department (“CID”) at the time of the allegations herein. Mr. Johnson is charged with one count of Conspiracy to Commit Bribery contrary to section 89(1) of the *Penal Code* and section 3(2)(a) of the *Prevention of Bribery Act*. He, along with the Applicant, is also charged with one count of Accessory After the Fact to the Offence of Conspiracy to Commit Stealing contrary to sections 88A(3)(b), 89(1) and 345 of the *Penal Code*. Mr. Johnson is additionally charged with one count of Stealing contrary to section 340(4) of the *Penal Code* and one count of Receiving contrary to section 358 of the *Penal Code*.

[3.] Deangelo Rolle is an officer in the RBPF who held the rank of Sergeant assigned to the CID at the time of the allegations herein. He is charged with one count of Receiving contrary to section 358 of the *Penal Code* and one count of Abetment to Stealing contrary to section 86(1) and 345 of the *Penal Code*.

[4.] The allegations in this case flow from the robbery of approximately one million four hundred thousand dollars from the inside of an I.C.S. Security transport vehicle parked outside of Odyssey Aviation located in the general area of the Lynden Pindling International Airport. This robbery is alleged to have been orchestrated by the late, reputed gang leader, Michael Fox Jr. The Applicant and Mr. Johnson are alleged to have engaged in negotiations towards blunting any prosecution of Mr. Fox for the robbery in exchange for payments presumably from the stolen funds.

[5.] At the core of the allegations against the Applicant and Mr. Johnson are five voice recordings (the “Voice Recordings”). These Voice Recordings were broadcast on or about July 3, 2024 by a local FaceBook personality, Sylvens Metayer during his live video broadcast on that platform. The Recordings were further circulated on the FaceBook and WhatsApp social media platforms by individuals who had accessed Mr. Metayer’s broadcast. This provenance for the Voice Recordings is explained in the detailed report of Assistant Police Commissioner Dwight Adderley dated January 9, 2025 (the “Adderley Report”).

[6.] Not surprisingly, the broadcast and circulation of the Voice Recordings prompted an investigation by the RBPF. As part of the overall investigation, the police in August, 2024 sought the return from the United States Federal Bureau of Investigation (the “FBI”) of several devices that had been provided by the RBPF to the FBI for forensic examination, namely two iPads, two laptop computers, nine cellphones and four aerial drones. All of these devices had come into the possession

of the RBPF upon the execution of a search warrant on January 4, 2024 at the home of Michael Fox Jr.

[7.] The Applicant brings this Application seeking to stay the prosecution of the charges against him for the following reasons:

- i. The Voice Recordings are inadmissible as they have not been authenticated in accordance with Sections 41 to 48 and Sections 66 to 67 of the *Evidence Act*;
- ii. The purported extraction of Voice Recordings from a Facebook Live broadcast is technically impossible and the prosecution's account of the provenance of the recordings is internally contradicted and forensically unsupported;
- iii. The extraction and forensic examination of digital content from the cell phones of Michael Fox Jr. was conducted without a valid and specific search warrant authorizing such extraction, rendering the evidence unconstitutionally and unlawfully obtained; and,
- iv. The VBI was filed and served in the absence of any admissible evidential material implicating the Applicant, and its continuation constitutes an abuse of the process.

Analysis

[8.] The Applicant cast his Application as being a request that the Court quash the VBI in this prosecution. He says this relief is warranted as the VBI does not disclose

a “true case supported by admissible and cogent evidence”. The Applicant’s written submissions refine his position to assert that “the evidential foundation upon which the VBI is premised is fundamentally deficient”.

[9.] The Application distilled is a challenge to the admissibility of the Voice Recordings. The Applicant says they are not admissible and that there is no evidence against him without the Voice Recordings such that the prosecution against him must be discontinued to avoid an abuse of process. Clearly, this is an evidentiary issue engaging Rules 7A(2)(b) and 7B(2) of the Supreme Court (Criminal Case Management)(Amendment) Rules, 2024 (the “Rules”).

[10.] The Rules direct that no evidentiary hearing may be heard prior to the Applicant filing his Defence Statement, which has not yet happened. That said, the Court notes that both the Applicant and the DPP have filed extensive submissions, including case law and other materials, to address the various issues identified in the Application, including the admissibility of the Voice Recordings. In these circumstances, including a trial scheduled to commence in November, 2026, the interests of justice are best served with the Court relying on sections 78F and 178(1) of the *Evidence Act* complemented by its inherent management powers to provide an evidentiary ruling despite the noted non-compliance with the Rules.

[11.] It is trite to state that evidence must be relevant to a live trial issue to be admitted. In other words, the purported evidence must offer some assistance in proving or disproving a fact(s) in issue. That said, all relevant evidence is not admissible. Relevant evidence may be inadmissible arising from statutory prohibition. Relevant evidence may be denied admission based upon so called rules or principles of evidence that have developed over time through prior judicial decisions.

[12.] Flowing from the above, proposed evidence must be relevant and compliant with applicable statute and case law established rules. Even then evidence may be deemed inadmissible through general judicial discretion where the prejudicial effect exceeds the probative value of the evidence.

[13.] The starting point to address the Application is to determine if the challenged evidence is relevant. The essence of the narrative in this prosecution is an alleged agreement involving the Applicant, Mr. Johnson and Mr. Fox to subvert a criminal investigation in exchange for financial compensation. The prosecution alleges that the Voice Recordings capture the Applicant, Mr. Johnson and Michael Fox Jr. discussing this criminal agreement. Clearly, the Voice Recordings on their face present evidence relevant to the issue of identification of the conversation participants along with the content of those conversations for the jury to consider.

[14.] Given relevance is established, the first question to consider in addressing the Application is whether there is a statutory prohibition on admitting the Voice Recordings. There is not.

[15.] The RBPF obtained the Voice Recordings from Mr. Metayer's FaceBook live video broadcast on July 3, 2024 and/or from subsequent circulation by individuals on the FaceBook and WhatsApp social media platform who accessed Mr. Metayer's broadcast. This is confirmed by the Adderley Report. Clearly, the Recordings obtained by the police were not originals sourced from any of the alleged participants in the Recordings or through other direct means such as the police tapping into these discussions. The Voice Recordings are copies by any definition. The Applicant says these copies offend sections 41-48 and 66-67 of the *Evidence Act*.

[16.] The Court agrees with the DPP that section 66 of the *Evidence Act* does not apply to the Voice Recordings at issue here. Section 66 addresses an entirely

different circumstance and “document” than the Voice Recordings. The Court also agrees that section 67 of the *Evidence Act* was repealed by the Third Schedule to the *Proceeds of Crime Act*.

[17.] Sections 41 of the *Evidence Act* simply says that the contents of a document, which would include an audio recording pursuant to the definition of “document” in section 2, can be proven by primary or secondary evidence. Section 42 defines primary evidence as being the document itself. Section 43 provides a non-exhaustive list of secondary evidence examples. There is no doubt that secondary evidence includes copies of the original document (see: *Commissioner of Police v. Rudolph King* MCCrApp. No. 44 of 2022 at para. 15).

[18.] It is well established that statutes are to be interpreted contextually and purposively. The direction to be taken from sections 41-48 of the *Evidence Act* and related judicial decisions is neither complicated nor controversial. Originals of any document, including a recording, should be presented at trial where that document is reasonably available. However, a copy of the document can be admitted where the original is not reasonably available with the question of weight being left for the trier to determine.

[19.] This construct has long been endorsed (see: Lord Esher in *Lucas v. Williams & Sons*, (1892) 2 Q.B. 113 at 116 and Lord Denning in *Garton v. Hunter*, (1969) 2 Q.B. 37 at 44) and makes continuing sense where we now regularly have evidence presented in criminal trials sourced second hand from unidentifiable individuals disseminating documents, photographs, audio and video recordings electronically across various social media platforms.

[20.] The Voice Recordings are secondary evidence (i.e. copies) compliant with the *Evidence Act* and related case law.

[21.] The Application also challenges the admissibility of the Voice Recordings on the ground that the prosecution has failed to authenticate the Recordings. The Applicant argues that if the Voice Recordings are not authentic then there is no reliable evidence available from them to assist in proving or disproving anything in this case. Put more formally, the Applicant contends that the Voice Recordings should be excluded because their probative value is negligible and outweighed by the prejudice that would result from allowing that evidence to be admitted at trial.

[22.] The probative value of any evidence is found in its contribution to proving a fact in issue at trial.

[23.] The prejudicial impact of any evidence is not measured in the potential harm it may do to a party's position, including that an accused may be viewed in a negative light or found guilty based on the disputed evidence. The prejudice to be considered is the risk that the trier of facts, in particular a jury, will misuse the evidence for an improper purpose, including that the evidence will arouse bias, prejudice, sympathy, or fear, with these emotions contaminating the decision-making process

[24.] The issue of the identification of the participants in the Voice Recordings is central in this case. Authentication and relevance are interwoven. If the evidence proffered is not authentic or in other words real then it lacks relevance. Do the Voice Recordings and related evidence present real evidence that is relevant to the identification issue in this case? The answer is yes.

[25.] The Applicant relies on the Affidavit from his intended expert, Dr. Raymond Wells sworn April 8, 2026 ("Dr. Wells' Affidavit") in support of his argument that the Voice Recordings lack probative value. Dr. Wells identifies himself as a "cybersecurity and digital forensics professional with over twenty five (25) years

of experience in information technology, cyber security, digital forensic investigations, systems architecture and security governance”.

[26.] Dr. Wells’ Affidavit lists his impressive education, professional training and related experience. He notes that neither the report of the DPP’s intended expert, Dr. Christine Kirchhubel dated September 5, 2025 (“Dr. Kirchhubel’s Report”) nor the related Adderley Report reference any analysis of the “metadata” or “hash values” associated with the Voice Recordings.

[27.] Dr. Wells defines metadata as information embedded in a digital message, recording or other file when it is created, including information concerning its origin, time and location. Dr. Wells describes hashing as a process whereby an original digital file is given a specific algorithmic value that allows for the detection of any subsequent alteration.

[28.] Dr. Wells offered his opinion that no authentication of the Voice Recordings is possible without the metadata and hash values with the result that “alteration, manipulation, contamination and/or digital forgery cannot be excluded”.

[29.] In other words, Dr. Wells cannot, without the metadata and hash values, confirm whether the Voice Recordings are authentic recordings of conversations or not. He challenges Dr. Kirchhubel’s ability to determine authenticity for the same reason.

[30.] Dr. Kirchhubel’s Report identifies herself as “a forensic consultant in speech analysis ...having produced expert reports in hundreds of cases involving voice comparison analysis, transcription, and other voice/speech analysis matters”. Dr. Kirchhubel’s Report confirms that she was provided with the Voice Recordings

along with known recordings for each of the Applicant, Michael Johnson and Michael Fox Jr.

[31.] Dr. Kirchhubel's Report noted that the Voice Recordings were not suitable for comparison with the known recordings for each of the Applicant, Michael Johnson and Michael Fox Jr. Stated differently, Dr. Kirchhubel was unable to confirm a match between the Voice Recordings and any of the Applicant, Michael Johnson and/or Michael Fox Jr.

[32.] Dr. Kirchhubel further noted that one of the five Voice Recordings was of insufficient quality to evaluate whether the Recordings were generated by Artificial Intelligence ("AI"). Dr. Kirchhubel was able to find that there was "very strong support for the view" that the remaining four Voice Recordings were not generated by AI.

[33.] Lastly, Dr. Kirchhubel opined that there was "strong support for the view" that there was one, unidentified, primary male speaker in all of the Voice Recordings.

[34.] In total, Dr. Kirchhubel concluded that Voice Recordings are probably authentic recordings of conversations with one male who is the primary participant in all of the discussions.

[35.] Stating the obvious, the trial in this matter has not commenced. Dr. Wells and Dr. Kirchhubel have not been qualified as an expert able to provide opinion evidence, neither has testified or had their respective opinions subjected to cross-examination.

[36.] The DPP's intended expert offers an opinion that real discussions are captured in the Voice Recordings with one of those participants being the primary voice in all of the Recordings. The Applicant's intended expert says the DPP opinion is not possible. If permitted to testify, the opinions of each expert will be part of the overall evidence that triers will have, to accept or reject, towards determining the facts at trial, including whether the Voice Recordings capture real individuals and conversations.

[37.] The DPP has presented additional evidence that addresses the authenticity of the Voice Recordings.

[38.] The police played the Voice Recordings for Michael Johnson to hear during his Record of Interview. Michael Johnson admitted that he is one of the participants in one of the Voice Recordings. Mr. Johnson identified Michael Fox Jr. as the other person heard having a discussion. Mr. Johnson recalled "having a conversation in relation to him turning himself in". In other words, Mr. Johnson confirms that one of the five challenged recordings is an authentic recording of a conversation he had with Michael Fox Jr. This admission would appear to support Dr. Kirchhubel's opinion that the Voice Recordings were not generated by AI and contain one, primary, real male voice. Mr. Johnson denied being a participant in any of the other four recordings.

[39.] The DPP has also presented the statement from Michael Fox Jr.'s mother, Mitzi Jones, who says she recognizes the voice of her son, Michael Johnson and the Applicant as participants in the Recordings. In her statement, she provides the relationship history that facilitates her doing so.

[40.] The DPP has also provided the statements of Superintendent Antonio Levarity and Superintendent Terrico Sweeting who each say they recognize the voices of the Applicant, Mr. Johnson and Michael Fox Jr. based on their respective past dealings with each.

[41.] The Applicant argues that lay voice identification from the Voice Recordings cannot be permitted here, as a matter of logic, where the DPP's expert, Dr. Kirchhubel was unable to identify the participants. The Court rejects this argument.

[42.] Generally, it is well settled that voice identification tendered through a lay person is admissible (see: *Wilson Joseph v. The Commissioner of Police*; *Jacoby Knowles v. The Commissioner of Police* MCCrApp Nos. 142 and 143 of 2012).

[43.] Specifically, the Applicant's argument ignores the different identification foundations for expert versus lay voice identification. Expert voice comparison such as that provided by Dr. Kirchhubel is based on recognized human and technological forensics, such as auditory-phonetic and acoustic analysis, applied to the subject recordings. Lay witnesses provide what is referred to as recognition evidence on the basis of acquired familiarity with a speaker's voice. Expert voice analysis and lay voice recognition based on familiarity are not mutually exclusive. They can and often do co-exist.

[44.] In summary, the Voice Recordings offer probative, seminal evidence on the central issues of identification of participants and content of communications connecting the Applicant to the allegations, if accepted by the trier of fact. This evidence should be admitted unless the prejudice of admission outweighs the probative value. Here it does not.

[45.] The Applicant has not demonstrated any prejudice flowing from the admission of the Voice Recordings. The Applicant has retained Dr. Wells who will presumably be called as a trial witness to challenge the evidence of Dr. Kirchhubel and the lay witnesses. The Applicant's counsel shall have full opportunity to cross-examine all expert and lay identification witnesses. The Applicant is at liberty to call other lay witnesses to challenge voice recognition. In addition, the Court must provide the jury with a caution respecting identification evidence generally and voice identification particularly highlighting the specifics of any evidence frailties.

[46.] The Voice Recordings are admissible given their significant probative value and the lack of demonstrated prejudice to the Applicant.

[47.] The Applicant also challenges the evidence obtained through the search warrant executed at the residence of Mr. Fox.

[48.] The Court is unclear respecting what evidence, if any, the DPP is relying on from the items seized. Two reports have been filed, namely from Reserve Inspector Strachan dated March 19, 2026 and Andrew Lewis, forensic examiner with Regional Security System Digital Forensics Lab, dated March 16, 2026, confirming an extraction of two seized cell phones was recently completed. However, nothing has been filed by the DPP setting out any evidence gleaned from the extractions that is relevant to the charges outstanding against the Applicant, Mr. Johnson or Mr. Rolle. Again, the Adderley Report notes that the Voice Recordings were sourced from the Facebook and/or WhatsApp social media platforms prior to the charges herein being initiated and well before the extractions from Mr. Fox's phone.

[49.] Further, the Court is at a loss to understand what standing the Applicant would have to challenge the lawfulness of a search warrant executed at a residence he has no legal interest in where items not belonging to him were seized.

[50.] The final challenge raised by the Applicant was to the VBI itself. The Applicant has not identified any defect in the wording of the VBI and there appears to be none. The VBI clearly identifies the specific charges and fundamental details (i.e. time and place) for the alleged offences.

[51.] The Court has two comments to the extent that the Applicant seeks to quash the VBI for insufficiency of evidence. One, the Court agrees with the DPP that sufficiency of evidence is best suited to a No Case Application following the close of the prosecution evidence. Only then will the Court have the benefit of the whole, tested evidence to undertake the appropriate analysis on the issue of sufficiency (see: *R. v. Chairman, County of London Quarter Sessions ex parte Downes* [1954] 1 Q.B. 1 and *R. v. Rey Rodriguez* and another decided 17 February 2020). Two, the Court has above determined that there is probative evidence presented by the DPP going to the issue of identification and the Applicant's involvement in the allegations to go the jury for consideration. There is no basis to quash the VBI.

Decision

[52.] The Application brought by B'jorn Ferguson for various relief is denied and dismissed.

Dated this day of August A.D. 2026

Justice D. Fitzpatrick