COMMONWEALTH OF THE BAHAMAS **VBI No. 240/09/2024**

IN THE SUPREME COURT

Criminal Division

BETWEEN

TERRY SEARS a.k.a. "TJ"

The Applicant

V

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: **The Honorable Mr. Justice Dale Fitzpatrick**

APPEARANCES: **Mr. Ian M. Jupp on behalf of the Applicant**

Mrs. Janet Munnings on behalf of the Respondent

Heard on the papers

Criminal Law – Discovery – Information within database of the Royal Bahamas Police Force – the Sexual Offences Act Chapter 99 – The Police Force Act 2009 Chapter 205

DECISION

FITZPATRICK J

Introduction

[1.] The Applicant, Mr. Terry Sears (the "Applicant") brings an application for further disclosure (the "Application"). The Application is supported by the Applicant's affidavit filed on February 26th, 2026.

[2.] The Applicant seeks production of the following items:

a) A date stamped printout of all information from the Royal Bahamas Police Force (the "RBPF") mainframe AS 400 computer system (the "Mainframe") in relation to the Applicant for the 2024 calendar year; and,

b) A date stamped printout of all information from the Mainframe in relation to any complaints of unlawful sexual intercourse made at any time by the parents of the minor virtual complainant against the Applicant.

Background

[3.] On July 16th, 2024, the Applicant was arrested and charged with sexual intercourse with a minor of the same sex, contrary to *section 16(1) of the Sexual Offences Act.* The offences are alleged to have occurred between April 1st, 2024 and June 29th, 2024.

[4.] On July 23rd, 2024, the Applicant was arraigned before the Magistrate's Court on a charge of sexual intercourse with a minor of the same sex, contrary to *section 16(1) of the Sexual Offences Act.* He was subsequently served with the voluntary bill of indictment on October 16th, 2024 (the "VBI"). On December 13th, 2024, the Applicant was arraigned before the Supreme Court before Senior Justice Cheryl Grant-Thompson.

[5.] The VBI lists a total of seventeen (17) witnesses to be called at trial by the Respondent. The Respondent's list of witnesses is comprised of five (5) civilian witnesses, including the minor virtual complainant and both of his parents, one (1) doctor and eleven (11) police witnesses.

[6.] The Respondent has disclosed statements from each of the seventeen witnesses intended for trial. The Respondent has disclosed the police photographs of the alleged crime scenes. The Respondent has disclosed a video from the Hilton (British Colonial) Hotel where the Applicant met with both parents of the minor virtual complainant purportedly in connection with the allegations. The Respondent has disclosed relevant phone records of the virtual complainant's mother.

[7.] The back up trial date in this matter was scheduled for January 19th, 2026. The back up trial date did not proceed at the request of counsel for the Applicant. The Applicant subsequently filed the Application seeking the further disclosure noted above. There is no other outstanding request for disclosure.

Analysis

[8.] At the heart of any application for disclosure is the issue of whether the requested information or evidence is relevant. The duty of disclosure is not unbounded. The Respondent has a general duty to disclose anything that is or may potentially be relevant. The rationale for this duty is clear, namely to provide the accused person with full notice of the case to be met towards facilitating the opportunity to make full answer and defence and otherwise ensure a fair trial.

[9.] The Supreme Court decision in *The Queen v David Shane Gibson SC No. 233/10/*2017, at paragraphs 105 – 106 ("*Gibson*") usefully describes the ambits of the prosecution's disclosure obligations where Madame Senior Justice Charles (as she then was) stated:

> "The Prosecution is under a duty to disclose as soon as is reasonably practicable all relevant material. The question of what material should be disclosed was considered in Keane (1994) 99 Cr. App. R. 1. The Court of Appeal said that the test of what was disclosable was to determine whether the material was relevant (or possibly relevant) to the issue in the case, or raised (or possibly raised) a new issue the existence of which was not apparent from the prosecution evidence, or held out a real prospect of providing a lead on evidence relevant to these matters. If the prosecution was in doubt about the materialty of information the Court should be asked to rule."
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> "The principle establishes that it will be for the defence to establish why the material might be expected to assist them. The requirement that it might reasonably be expected to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure. On the other hand, if proper explanation of the relevance of the material and as to how it might assist is given, the Court will be under a duty to order disclosure in the interests of a fair trial."

[10.] The Applicant bears the burden, on a balance of probabilities, of establishing the relevance or potential relevance of the information requested.

[11.] The Applicant's argument is fairly straightforward. He says that *sections 6 and 106(b) of the Police Act, 2009* (the "*Police Act*"), together with unspecified regulations, establishes a mandatory framework governing the recording and processing of complaints, the conduct and management of criminal investigations, and the maintenance of official police records.

[12.] The Applicant further contends that the failure to record a complaint made to the police on the Mainframe amounts to a direct breach of *rules 2(10) and (11), and 3(14), (17), and (18) of the Police Act* subjecting an offending officer to a range of identified potential penalties.

[13.] Ultimately, the Applicant contends that the original complaint made to the police in this matter was not recorded, processed or updated in the Mainframe contrary to requirements of the *Police Act*. As such, the Applicant argues that the complaint against him is without lawful foundation. Further, the Applicant submits that the complaint and investigation is thereby vulnerable to manipulation in particular by the parents of the minor virtual complainant.

[14.] The evidence that the Applicant relies upon in support of his disclosure request is sparse. His affidavit sworn February 24th, 2026 presents the following two substantive paragraphs:

a) At paragraph 3. the Applicant says that "the alleged complaint in this matter may have been brought against me, processed and recorded in an improper and unlawful manner"; and,
b) At paragraph 5. the Applicant says that "this matter from its inception…has been and continues to be, handled in a manner – whether in relation to the investigation, gathering of evidence, procurement of witnesses, and recording and/or updating the informational record herein – which leaves the matter, as well as myself, open and vulnerable to manipulation and/or coercion by the Virtual Complainant and/or either or both of his Parents, in particular due to the high profile nature of one of the latter, and I am thereby disadvantaged as a result thereof."

[15.] The Mainframe is an internal electronic repository for the information and evidence gathered by the police commencing with a complaint and the subsequent investigation. In other words, the Mainframe is a data storage facility where the RBPF are internally required to record complaints when received and the elements of any investigation flowing from such complaints pursuant to the *Police Act*.

[16.] The investigative process is not, on its face, complicated. When the police are contacted they meet with the person(s) presenting the complaint and witnesses who each provide a written, signed and dated statement detailing the information each has respecting the subject allegation. The police also typically dispatch officers to further investigate the complaint, including taking photographs or videos of the crime scene, obtaining relevant third party videos, extracting relevant cell phone data and obtaining relevant documents among other possible investigative steps. All of this can be referred to as primary evidence or records gathered by the police from the complaint forward, which also serve to reflect the investigative process.

[17.] Clearly, all of the primary records must be disclosed to the accused. It is the evidence that the prosecution intends to rely on and represents the case that the accused must answer.

[18.] The Mainframe does not house or produce additional evidence beyond the primary records already disclosed to an accused. The information stored on the Mainframe is an electronic recording of the primary records whether in whole or part. The information there stored is not a new development in the prosecution's case or information which the Applicant is not already aware.

[19.] The Applicant has not established any actual or potential relevance for the requested information on the Mainframe in relation to the Applicant for the 2024 calendar year, including with regard to the integrity of the complaint and related investigation.

[20.] The Applicant simply alleges that the complaint and other primary evidence may not be recorded in the Mainframe and, if not, that the complaint in this case along with all that followed is "unlawful". This allegation is not supported by any evidence. The Applicant has all of the primary evidence in this case, including the signed and dated statements of the minor virtual

complainant and both of his parents. The provenance of the complaint, the investigative process and all of the evidence in support of the complaint is reflected in the primary records provided to the Applicant.

[21.] The Applicant has also failed to establish any actual or potential relevance for the requested information on the Mainframe in relation to any complaints of unlawful sexual intercourse made at any time by the parents of the minor virtual complainant against the Applicant. He simply alleges that the "handling" of the complaint and investigation has left him vulnerable to unspecified manipulation or coercion by the parents of the minor virtual complainant. This allegation is not supported by any evidence and is completely speculative.

[22.] The Applicant has also failed to adduce any evidence that the non-disclosure of the information contained in the Mainframe would prejudice his ability to defend the allegations and/or to receive a fair trial. Again, the Applicant has all of the primary evidence in this case, including the signed and dated statements of the minor virtual complainant and both of his parents. The refusal of the further disclosure sought would not compromise the Applicant's right to a fair hearing or his ability to defend the allegations made against him.

[23.] The Applicant has also failed to demonstrate that the absence of "proper" records within the Mainframe would amount to an abuse of process and render the Respondent's continued prosecution improper. The Applicant has provided neither sufficient legal authority nor adequate evidence to establish that the alleged absence or inadequacy of Mainframe records, even if established, is capable of amounting to an abuse of process or any impropriety beyond an internal disciplinary matter governed by the *Police Act* and any applicable process of the RBPF.

Disposition

[24.] The Applicant's Application for further disclosure is dismissed.

Dated 30th October, 2026

Fitzpatrick J