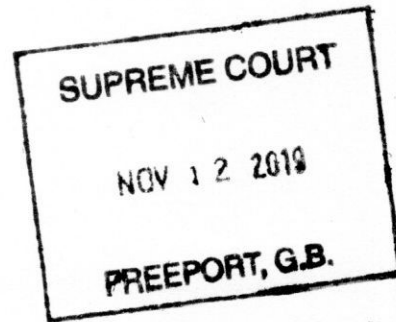


**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Criminal Division**

**2019/CRI/bal/FP/00102**

**BETWEEN**

**TREYVANE DORSETT**



**Applicant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

**DECISION**

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Wendell A. Smith for the Applicant  
Mr. Neil Brathwaite for the Respondent

**Background**

- 1) The Applicant is a Bahamian male citizen. He is 24 years old having been born on August 5, 1995. He relies on his Affidavit filed herein on November 6, 2019 as follows.

**Statement of Facts**

- 2) The Applicant is charged with two counts of armed robbery.
- 3) The Applicant was remanded to the Bahamas Department of Corrections on July 5, 2019.
- 4) The Applicant asserts his innocence.
- 5) That at the time of his arrest he was enrolled at the Bahamas Technical and Vocational Institute on the Welding Programme.
- 6) That he is domiciled in The Bahamas having lived in The Bahamas all of his life. He has strong ties to the community, namely, his aunts and several family members.
- 7) The Applicant has never been convicted of any similar offence.
- 8) The Applicant pointed out what his attorney sees as the inherent weakness of the Crown's

case. That the only evidence that will be adduced at trial is a Confession Statement. That the purported Confession Statement was given under duress and that he awaits his day in Court to speak to the tactics used by the officers of the Central Detective Unit in order to coerce him into giving the same. That no credible forensic evidence has been adduced or will be adduced at trial.

- 9) That Applicant submitted that the issue of bail is to ensure his attendance on any adjourned date in this matter. That the Attorney General has not produced any evidence to satisfy the Court that he would commit an offence whilst on bail, that he would interfere with any of the witnesses in this matter, that he will abscond or that it is in the interest of his own safety that he be remanded. He asked the Court to admit him to bail with reasonable conditions.

## **Submissions**

### **Applicant**

- 10) Mr. Wendell Smith Counsel for the Applicant submitted that this is a peculiar situation. That the Crown has no evidence except a Confession Statement. The Crown has Witness Statements from the 2 Virtual Complainants, Marlyn Duncombe and Catherine Scavella, which state that the lone gunman was masked and they cannot identify him as the assailant. That no firearm was recovered nor were any fingerprints recovered from the scene.
- 11) That the Confession Statement was not given voluntarily while the Applicant was in custody at the Central Detective Unit.
- 12) That conditions can be imposed including electric monitoring and reporting conditions.
- 13) The Applicant has no previous convictions.
- 14) The Witnesses were unable to identify the assailant and there was no evidence that the Applicant knew the Witnesses.
- 15) Mr. Smith referred the Court to the Applicant's constitutional rights to liberty as enunciated in the case of **Hurnam v The State (2005) UKPC 49** where Lord Bingham of Cornhill stated inter alia; **"The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and family. But the community has a countervailing interest, in**

**seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit further offences”.**

A blanket statement by the Crown that he is likely to commit an offence if put on bail is not enough. The onus is on Crown to satisfy the Court by way of information that the Applicant will interfere with witnesses. There are multiple conditions that the Court can impose so that the Applicant does not come into contact with the Virtual Complainants.

16) Mr. Smith submitted that the Applicant is presumed innocent of the charge and he referred the Court to Article 20 (2) (a) of the Constitution of The Bahamas which provides that the Applicant is presumed innocent until proven guilty.

17) Mr. Smith referred the Court to the case of **A. G. v Bradley Ferguson** where Osadebay JA said page 61 of the Judgment: **“It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at the trial. As stated by Coleridge J. in Barronet’s case earlier—the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial.”**

18) That the last trial date set during the week of November 4, 2019 was in 2022. The Applicant has not been served with a VBI. That his trial is likely to be in 2022.

### **Respondent**

19) Mr. Neil Brathwaite, Counsel for the Respondent submits that the Applicant should not be granted bail for the following reasons:

- (1) The Respondent relies on the Affidavit of PCpl 2169 Prescott Pinder filed herein on November 8, 2019, where he states, in part, that on June 28, 2019 the Virtual Complainants, Catherine Scavella a Cashier and Merlyn Duncombe a customer were robbed by a lone masked gunman at the Coca Cola plant on Yellow Pine Road. Neither could identify the gunman but Ms. Duncombe was robbed of a backpack containing medicine. That on July 1, 2019 the Applicant was arrested and admitted to the offences in a Record of Interview and a

written Statement under caution. That the Applicant accompanied officers on enquiries and pointed out relevant scenes.

- (2) The Applicant has no previous convictions.
- 20) Mr. Brathwaite accepted that the case turns on the Confession Statement. The Applicant is charged with 2 counts of Armed Robbery. That these are Part C offences of the Bail (Amendment) Act 2011 which provides that bail shall not be granted.
- 21) That there has not been any unreasonable delay. The Court has before it the Record of Interview and a Statement. That the Record of Interview is particularly fulsome. The Applicant states that he was sitting down thinking about how to make ends meet, only making \$50.00 per week. He was under financial pressure.
- 22) That it is likely that he will reoffend if released on bail. His financial circumstances would not have changed since he was in custody, in fact his circumstances will now be worse, so he may not have any recourse but to revert to the same activity. Mr. Brathwaite referred the Court to the Applicant's Statement.
- 23) That this is not a trial. The Court does not have to determine the admissibility of the Statement. These are not the things that the Police would coach someone to say. The Applicant goes into detail about how the robbery was carried out.
- 24) That the evidence is not weak. It is cogent. He points out his clothing and stated that these were the clothes that he was wearing when he committed the offence. The Applicant gives an explanation as to what happened with the firearm and money, they were in his bag and it left it in a yard and someone took the bag. Clearly that is why there is no forensic evidence.
- 25) If you have forensic evidence, ID evidence, or a Confession Statement there will always be challenges. But these issues are for trial. Bail ought to be refused.
- 26) The Applicant has no antecedents.
- 27) There is no unreasonable delay in this matter.
- 28) Mr. Smith responded that he agreed that the evidence will be challenged but in this case, if the Confession Statement falls away there will be no evidence against the Defendant.

## **Analysis and conclusions**

### **The Law**

- 29) The onus is upon the Crown to satisfy the Court that the applicant ought not to be granted bail and that the standard is on a balance of probabilities.

the following reasons:

- (i) Armed Robbery is a serious offence but one for which bail can be granted.
- (ii) In his Record of Interview and in his Statement under caution he admits to carrying out the robberies. But his evidence in this application was that the statements were not voluntary.
- (iii) While evidence must be vetted at trial and not in a bail application the Court should satisfy itself that the Police had probable cause to charge the Applicant **and that detention is necessary to ensure his appearance at trial** (emphasis mine). I am satisfied that the Police had such probable cause based on the alleged admissions in the Applicant's Record of Interview and Statement but not that detention is a necessary means to ensure his appearance at trial. The Applicant has no criminal history and no matters pending before the Courts. I have no reason to suspect he will not appear at his trial and there are measures which can be put in place to monitor him.
- (iv) Because of the nature and seriousness of the offence and the existence of his statements to the Police the Applicant will know that if he is convicted he is likely to receive a receive a long sentence and he may be tempted to abscond, but there is no evidence before the Court to suggest that he might abscond. Nor is there any evidence before the Court that he will interfere with the witnesses.
- (v) There has been no unreasonable delay thus far.
- (vi) There is no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail.
- (vii) It does not appear that the applicant should be remanded in custody for his own protection.

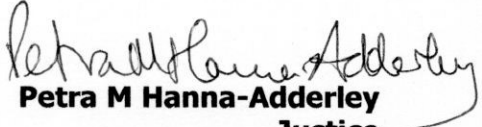
### **Disposition**

35) Bail is granted to the Applicant in the sum of \$15,000.00 one or two sureties or Cash one or two sureties on the following conditions:

- (i) The Applicant is to be fitted with an ankle monitor. The Applicant is subjected to a curfew from the hours of 9:00 p.m. to 5:00 a.m. daily.
- (ii) The Applicant is to report to Central Police Station every Monday, Wednesday and Friday by 6:00 p.m.

- (iii) The Applicant is not to contact or interfere with any of the Crown's witnesses either by himself or through his agents.
- (iv) The Applicant is to surrender his travel documents to the Court.

This: 11<sup>th</sup> day of November, 2019

  
**Petra M Hanna-Adderley**  
**Justice**