

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL LAW DIVISION
2016/CRI/bal/00095

BETWEEN

LORENZO WILSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Madam Justice Renae McKay

Appearances: Mr. Jomo Campbell for the Applicant
Ms. Cassie Bethell for the Respondent

Hearing Date: 17th June 2021

Ruling Date: 15th July 2021

RULING ON BAIL

1. This ruling concerns an application for bail by the Applicant, Mr. Lorenzo Wilson (**the “Applicant”**). His application is objected to by the Respondent (**the “Director of Public Prosecutions”**).
2. The Applicant, a twenty-five year old Bahamian citizen, father of a five month old son, and a self-employed air conditioning repair technician, averred that he was arraigned on the 23rd June 2020 on one count of murder and one count of attempted murder. He was subsequently served with his Voluntary Bill of Indictment on the 18th January 2021 (**the “VBI”**).
3. The Applicant disclosed that he had a previous conviction for firearms and ammunition for which he was incarcerated for eighteen months and was then subsequently released in 2017. Since his release he had no incidents with the law and did his endeavor best to be a contributing member of society.
4. The Applicant averred that he had no other pending matters and that he was innocent of the said charges as he did not have any involvement with the said murder or attempted murder. He stated that the deceased person was known to him since his time of incarceration and that their interactions were always friendly as there was no issue

between them. The Applicant continued that at the time of the alleged incident, he was at home with his girlfriend.

5. The Applicant further stated that the purported eye witnesses' evidence was wholly inconsistent and that he verily believed that they were either lying or grossly mistaken. He went on to say that he was a hardworking man and the provider for his family and that his detention placed his family in further hardship as they had to support him while he was on remand; notwithstanding that he had an infant to support. The Applicant added that he was eager to be with and help to support his family.
6. He concluded that he was not a flight risk and that if he was admitted to bail he would appear before the Court for his trial.
7. The Respondent by their Affidavit in Response to Bail filed 14th October 2020 (**the "14th October Affidavit"**) confirmed the charges that were made against the Applicant along with his convictions. They relied on various statements of Supt. Warren Johnson (**"Spt. Johnson"**) who stated that on Tuesday, 7th April 2020 he was in the area of Hampton St. when he heard gunshots. Thereafter, he ran over to where the shots were heard and saw a black vehicle parked in the middle of the road. One of the men had a long high powered rifle, looked in his direction and began to shoot at him. In return he fired at the man with his service pistol.
8. Spt. Johnson went on to say that the shooter then jumped into the vehicle which also had other men in it and who were also shooting in his direction. He continued that as the vehicle drove past him, he noticed that the passenger in the rear of the vehicle was a man known to him as Lorenzo Wilson a.k.a Cheddar. Subsequently, on Sunday, 21st June 2020, he positively identified him as the man who shot at him on 7th April, 2020.
9. The Respondent averred that they verily believed that the Applicant would either interfere with the witnesses in the matter or otherwise pervert the course of justice. Additionally, that if the Applicant was released on bail he had an incentive to abscond due to the nature of the penalty that may be imposed. The Respondent concluded that the Applicant was not a fit and proper candidate for bail and that there were no conditions that would be sufficient to protect both the public and to ensure the Applicant's attendance at trial.

Submissions

10. Counsel for the Applicant, Mr. Campbell, informed the Court that there was a previous bail application for the Applicant heard before the Hon. Madam Justice Fraser (**"Fraser J."**) who only had before her the evidence of Spt. Johnson. He contended that there were in fact three live witnesses, two of whom indicated that all of the occupants of the vehicle involved in the incident wore face masks which contradicted the evidence of Spt. Johnson.

11. Another contradiction he pointed out was that those witnesses indicated that the vehicle had sped off whereas Spt. Johnson had indicated that the vehicle was not going with much speed. In that regard, he contended that the alleged identification by Spt. Johnson was impossible and improbable.
12. Mr. Campbell disputed the Respondent's claim that the Applicant would interfere with witnesses. He contended that the Respondent's sole witness was a police officer and not a civilian witness who claimed at the time of the incident that he was in a position to defend himself which lessened the likelihood of any interference. Moreover, that the Applicant would not interfere with the Respondent as Spt. Johnson's evidence was negated by the evidence of the previously mentioned witnesses.
13. He continued that the Applicant was found at home at the time of his arrest after receiving the information about his residence. Therefore, he was not hiding and was not likely to abscond as all indications were that the Applicant had strong ties to the Country and if given the opportunity he would be re-employed.
14. Counsel for the Respondent, Ms. Bethell contended that a judge must simply decide if the evidence raised a reasonable suspicion of the commission of the offence to justify an accused's arrest and detention. She further contended that the application was not a trial, therefore they were not a fact finding mission.
15. Ms. Bethell went on to say that while the VBI was not served on the Applicant at the time of his previous bail application, the evidence of Spt. Johnson was not fresh evidence as it was exhibited to the 14th October Affidavit. She submitted that the Applicant now also had a trial date of 7th February, 2022 which was within the three year time period considered reasonable.
16. Ms. Bethell added that Spt. Johnson was a virtual complainant in the matter who was shot at. Therefore, his occupation did not negate the possibility that he could be interfered with by the Applicant if he was admitted to bail. Ms. Bethell drew the Court's attention to paragraph 13 of the appellate court's decision of Fraser J., where the Court indicated that the seriousness of the offence for which he is charged and the penalty likely to be imposed was always and continued to be an important consideration of whether bail should be granted or not.
17. She also highlighted the previous convictions of the Applicant which also concerned possession of a firearm which is similar to the present offence which was allegedly carried out by a firearm. Accordingly, the Applicant was not a fit and proper candidate for bail.

The Law

18. The Court's discretion to grant bail is contained in the Bail Act as amended by the Bail (Amendment) Act, 2011 (**the "Act"**), specifically section 4 which states as follows:

“4. (1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.”

Bail (Amendment) Act, 2011

“(2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged - -

- (a) has not been tried within a reasonable time;
- (b) is unlikely to be tried within a reasonable time; or
- (c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.

(2A) For the purpose of subsection (2)(a) and (b) ---

- (a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) For the purpose of subsection (2)(c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character or antecedents of the person charged, the need to protect the safety of the public or public order and, where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.

(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.”

“4. Amendment to First Schedule of the principal Act.

The First Schedule to the principal Act is amended -

- (a) by the repeal of Part A and the substitution of the following ---

"PART A

In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

- (a) whether there are substantial grounds for believing that the defendant, if released on bail, would-
 - (i) fail to surrender to custody or appear at his trial;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

- (b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
- (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

19. By the **Bail (Amendment) Act, 2014**, the First Schedule was again amended to reflect another paramount consideration.

“3. Amendment to First Schedule to Ch. 103.

The First Schedule to the principal Act is amended by the addition thereto of the following factors –

“(h) in the case of violence allegedly committed upon another by the defendant, the court’s paramount consideration is the need to protect the alleged victim.”.

20. It follows that the Court is required to consider certain factors for the proper disposal of a bail application, namely: the character and antecedents of the applicant, the nature and seriousness of the offence and the strength of evidence against the Applicant, the safety of the Applicant or the safety of the public, whether the Applicant would interfere with the prosecution’s witnesses, the protection of an alleged victim and whether the Applicant would fail to surrender to custody or appear at trial. A separate consideration is whether the Applicant is likely to be tried within a reasonable time.

21. I now turn to consider the factors as mandated.

The character and antecedents of the applicant

22. The Applicant has no pending matters but he does have previous convictions for possession of a firearm and ammunition. The present offence involves the use of a firearm. Therefore, it can be considered that the Applicant has the propensity to arm himself with firearms.

The nature and seriousness of the offence and the strength of evidence against the Applicant

23. The Applicant is charged with Murder and Attempted Murder. These offences are both serious offences. Moreover, the alleged incident occurred in a public space with other individuals around. Additionally, while the evidence proffered by the Respondent is

disputed, a bail application is not to be treated as a trial. As such, I only have to consider whether there was a sufficient link between the Applicant and the commission of the offence. This I so find in the instant case.

The safety of the Applicant or the safety of the public

24. The Respondent has not contended that the safety of the Applicant or the safety of the public would be at risk if the Applicant is admitted to bail.

Whether the Applicant would interfere with the prosecution's witnesses/The protection of an alleged victim

25. The Respondent submits that the Applicant would interfere with Spt. Johnson, a police officer who was shot at after the shooting of the deceased. The Applicant on the other hand contends that as Spt. Johnson was a police officer, this lessened the likelihood of the Applicant interfering with him if he was admitted to bail. The amendment to the Act makes the protection of an alleged victim a paramount consideration for a bail application.
26. Spt. Johnson's evidence against the Applicant is that he was seen in the vehicle that was allegedly involved in the shooting of the deceased and then turned and shot at him. There was not however, any evidence that the Applicant made any attempts to contact Spt. Johnson after the alleged incident.

Whether the Applicant would fail to surrender to custody or appear at trial

27. The Applicant is a Bahamian citizen. Apart from the Respondent's contention that the potential penalty to be imposed could cause him to abscond, there has been no substantial evidence provided by the Respondent that he would abscond.

Discussion and Ruling

28. An accused is afforded the opportunity to apply for bail when charged for an offence based on his constitutional right to the presumption of innocence. As a result, the Court has been provided with statutory considerations that must be weighed against each other in order to determine whether the presumption of innocence should be fettered and the accused denied bail.
29. An accused also has the right to apply for bail as much times as he would like pending his trial. In the instant case, the Applicant previously applied for and was denied bail by both my sister judge and the appellate Court. This present application therefore, is to be considered a fresh application, specifically because there is additional evidence that the aforementioned courts did not have before them, namely the evidence of the additional witnesses.

30. In the instant case, the Applicant does in fact have previous convictions concerning possession of a firearm and ammunition and the nature of the offence and the offence itself are both serious. On the other hand, there is no evidence that the Applicant would interfere with any witnesses, he has no pending matters, there is no evidence that his or the public's safety is at risk and there is no evidence that he would abscond but for the fact that he is facing a hefty penalty if he is convicted.
31. While a Court should consider curbing the possibility of an accused absconding, it is also well established that stringent conditions could be imposed to prevent the accused from doing so. Furthermore, as I previously stated, aside from the possibility that he faced a lengthy sentence, there was no evidence tendered that the Applicant would abscond. In fact, the Applicant has averred that he has a family, inclusive of a now 6 month old son who needs his support.
32. As for the previous conviction of the Applicant, he carried out his sentence and upon his release, he was charged with murder and attempted murder involving a firearm. A comparison of the two could result in a finding that the Applicant has a propensity to possess a firearm and ammunition and that this most recent charge shows an escalation from possession to actual use. However, the fact remains that until the Applicant has been convicted for the present offences he is to be considered innocent; that is his constitutional right.
33. Accordingly, I find that the Applicant is a fit and proper candidate to be admitted to bail and bail is granted as follows:
- In the amount of \$40,000 with two (2) suretors;
 - The Applicant shall report to the Wulff Road Police Station every Monday, Wednesday and Friday before 6:00 p.m.;
 - The Applicant shall be fitted with an Electronic Monitoring Device;
 - The Applicant shall surrender any and all of his travel documents;
 - The Applicant not interfere with any of the prosecution's witnesses;
 - A curfew shall be imposed on the Applicant between the hours of 9:00 p.m. and 6:00 a.m.

Dated this 15th day of July 2021


The Hon. Madam Justice Renae McKay