

COMMONWEALTH OF THE BAHAMAS

CASE NO. CRI/BAIL/FP/00026/2021

IN THE SUPREME COURT

Criminal Side

BETWEEN

SHARMARZ BROWN

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Mr. Ellsworth Darling along with Mrs. Copper-Rolle c/o
Director of Public Prosecutions

Mr. Shamarz Brown Pro Se

Hearing Date: 11th April, 2023

RULING ON BAIL

Forbes. J.

BACKGROUND

1. The Applicant filed an application seeking consideration of the Court as to the question of bail on the 6th February 2023. The Applicant stated to the Court during the hearing that he was remanded on the charge of Possession of a Firearm with Intent to Put Another in Fear (2 Counts); that he has close ties to the local area in #64P Frobisher Circle, Freeport, Grand Bahama. He also stated that he is prepared to comply with any and/or all conditions should be bail be granted and that he was previously released on Bail for Murder (2 counts) by this Court in June, 2021.
2. The Respondent filed an affidavit in response on 16th March 2023 and sworn by Corporal 771 Anastacia Rolle. She avers that the Applicant when arrested was discovered to be in possession of a firearm and the arresting Officer report was exhibited. The Report of Detective Constable 3494 Burrows notes that while on patrol on the 6th January 2023 and acting on information about shots being fired, proceeded to the area and received information from persons in the area and then observed shell casings. That he received additional information regarding two (2) vehicles that he observed the vehicles and observed an individual he knew as Trevor Reckley. That he observed as Mr. Reckley ran and he gave chase. That with use of his flashlight he observed a male with what he suspected to be a firearm. That this male tripped and fell. That he conducted a search of the area and discovered a black and silver .40 firearm. That he then arrested and cautioned the male who had tripped and fallen who gave his name as Sharmaz Brown of Frobisher Circle. That Brown said ***“Officers I ain’t bust them shots by Capricorn, I just heard them and then we pushed out.”***
3. Corporal Rolle also avers that the Applicant is alleged to have gang affiliations. Presented was an Affidavit by Assistant Superintendent of Police Nicolas Johnson who avers that he is attached to the Criminal Investigations Department in the serious crime area. That based on intelligence information that the Applicant is affiliated with a gang known

as “Nike Gang “. Although when the Applicant was questioned by the Court he denied any gang affiliations. Further, that the Applicant was granted bail by this Court on the 18th June 2021; that the conditions were bail in the sum of Thirty Thousand Dollars (\$20,000.00) with two sureties; that the Applicant was required to be outfitted with an Electronic Monitoring Device(EMD); to report to the Central Police Station, Freeport, Grand Bahama each Monday, & Friday before 6 pm; not to interfere with witnesses either himself or through any other person and **to remain in his home after 8pm on weekdays and 10pm on weekends until 6am in the morning (Emphasis added).**

4. Corporal Rolle further avers that on the day of the alleged incident there was a public discharge of a firearm that occurred at 11pm and as such was a violation of the Applicant’s conditions of bail. She further asserts that there were further violations of curfew observed as there was exhibited reports from Metro Security which evidenced the Applicant’s Global position as determined by the EMD worn by the Applicant. It was noted that at 11:23pm on the 6th January 2023 the Applicant was said to be on east Sunrise Highway, Freeport, Grand Bahama; also on the 6th January, 2023 at 11:45pm the Applicant was said to be on East Sunrise Highway, Grand Bahama. It is noted that when the Applicant was initially outfitted with the EMD on the 12th December 2021 at 11:19 am the Applicant identified his home address as Frobisher Circle, Freeport Grand Bahama.
5. During the hearing when questioned by the Court about these violations of curfew the Applicant admitted the January 6th 2023 incident and indicated that he went to the local restaurant known as “Pepper Pot” to get food. As for the other incidents the Applicant appears not to offer any explanation as to why he was not at his residence. The Court having heard the application for bail indicated its intention to render a decision and does so now. The issue for consideration given the current facts is whether this Court should grant this Applicant bail in his pending matter?

6. There was a further application sought by the Crown and that was the application seeking to revoke the bail previously granted by this Court and have the suretor forfeit the sums owed to the Crown for the alleged violations by the Applicant.
7. Also was an informal application by the suretor represented by Ms. Pleasant Bridgewater in which the suretor was seeking to withdraw herself as suretor for the Applicant's previous bail.

SUBMISSIONS

8. The Applicant being unrepresented was unable to provide any submissions save to deny the allegation contained within the Affidavit filed by the DPP and to reiterate that he is innocent of the alleged crime. The Court however notes the Court of Appeal decision of **Stephon Davis and the Director of Public Prosecution SCCrApp. No. 108 of 2020.**
9. The DPP filed its submissions on the 16th March 2023 and noted the serious nature of the allegations against the Applicant and whether there any conditions this Court can impose that will restrain this Applicant from committing additional crimes. The DPP refers the Court to the comments made by the Judge at first instance in **Stephon Davis v the Director of Public Prosecutions (supra)** and the comments made at paragraph 24 by the Court of Appeal in **Tyreke Mallory v. Director of Public Prosecutions SCCrApp. No.142 of 2021** where the Court adopted the comments of the Judge at first instance. Counsel for the DPP submits that the Applicant is unfit person for bail.

THE LAW

10. The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial. The Court must also take into consideration that the suretor now wishes to be allowed to withdraw notwithstanding it is at the last moment and perhaps motivated by the Crown application of forfeiture. And whether to accede to the Crown's application to revoke the previous bail granted to this Applicant for violating the terms of that bail.

11. Section 4 (1) of the Bail Act provides:-

“(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.

12. Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provides:-

“(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.(emphasis added)

DISCUSSION/ANALYSIS

13. It appears that the Respondent's submissions are that the Applicant has antecedents; that he has pending matters, the said matter being a murder case for which bail was given by the Court of Appeal and that the evidence adduced is cogent and powerful are grounds to deny the Applicants bail.

14. The Applicant faces a charge involving Possession of a Firearm with intent to put another in fear contrary to section 34(1) of the Firearms Act. This is an offence that has been included in Part C of the First Schedule of the Bail Act and the Bail (Amendment) Act, 2011 which states as follows:

"in Part C. by the insertion in the appropriate place of the following words -..

Attempted Murder- section 292, Ch. 84;

Possession of Firearm designed to discharge explosive matter - section 30 (1)(a), Ch. 213; Possession of Automatic Weapons- section (30)(1)(h), Ch. 213 ; Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property -- section 33, Ch. 213; Possession of Firearm

with intent to commit an indictable offence --- section 34(1), Ch. 213; Possession of Dangerous Drugs with intent to supply - section 22, Ch. 228;

Any offence under any of the following sections of the Sexual Offences Act, Ch. 99:

6 (rape), 10 (sexual intercourse with a person under fourteen years), 12 (sexual intercourse with a person suffering from a mental disorder), 13 (incest) and 14 (sexual intercourse with a dependent);”

15. Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence (as stated in paragraph 10 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part C offence shall have regard to the following factors as found in Part A of the Bail (Amendment) Act, 2011:-

“(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 purposes 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.”;

16. Thus the question is would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have in fact appeared and the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They however focused on the Applicant being a safety concern to the community.

17. As stated by the Court in **Stephon Davis v the DPP (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. However as this Court has noted events have now moved beyond the abstract, as this Applicant was already on bail by this very Court with stringent conditions imposed, specifically curfew conditions. This Court is aware that the Applicant has admitted to violating on one (1) occasion that he breached his curfew condition and that such breach occurred on the very evening that alleged incident of the public discharge of a firearm is said to have occurred. Furthermore the Applicant was said to be in the general vicinity. The Applicant did not offer any explanation as for the continued breaches which occurred on the 6th January, 2023, nor did he refute the arresting officer’s report. The purpose of the curfew is to protect the Applicant for just these kind of circumstances where alleged events can and do take place so that he or she can be accounted for. The Court is therefore satisfied that the evidence is supportive of this Applicant flouting the very conditions imposed by this Court. The Court is reasonably certain that there are no conditions it can impose that will ensure the Applicant’s compliance with its order. The Court notes the comments made by the Court of Appeal in **Riclaude Tassy and Director of Public Prosecution MCCRApp. No. 129 of 2022**, where the court said: **“A breach of bail conditions may give rise to criminal liability, as well as the risk of revocation of bail.”**

18. The additional issues for consideration is whether the one (1) instance of violation is sufficient to justify the revocation of the bail previously issued. The Court notes the Court of Appeal decision of **Bartholomew Pinder v.**

The Queen SCCrApp. No 94 of 2020, this case involves an Applicant who was granted bail while awaiting trial on several offences and he was required to surrender his passport. He was subsequently convicted in the Magistrate's Court for Possession of Dangerous Drugs. He was on bail pending his appeal but was arrested in Kingston Jamaica and was then arrested upon his return to the Bahamas. At a hearing before Snr. Justice Turner the Appellant's bail was revoked and he was remanded into custody. It was argued by Counsel before the Court of Appeal that the application was flawed as the Court had no Jurisdiction to revoke bail and further that the evidence relied upon was flawed, primarily relying upon hearsay evidence. President of the Court of Appeal Sir Michael Barnett noted at paragraph 26 said as follows: ***"In my judgment there was ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court."*** In addressing the issue of the use of hearsay in the affidavit relied upon by the Crown and submitted to the Court, The president said the following: ***"It has been accepted for years that the strict rules of evidence do not apply to bail applications and that hearsay evidence may be relied upon. In Attorney General v. Ferguson et al the Attorney General appealed a decision by a judge of the Supreme Court granting bail to the respondents. In the judgment allowing the appeal, the Court of Appeal said: "35. In a bail hearing it is for the prosecution to produce evidence to show why the defendant should not be released on bail. The prosecution is not required to prove beyond reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect. A prosecutor objecting to bail may state his opinion based on the evidence produced that if bail is granted the defendant, because of the circumstances, may fail to appear to take his trial or that given bail the defendant is likely to interfere with witnesses. A bail application is an informal inquiry and no strict rules of evidence are to be applied: R.V. Mansfield Justices, ex parte Sharkey [1985] QB. 613, Re Moles [1981] Crim. L. R. 170."***

19. The Court notes that the Applicant did not have the facility to address the issues as outlined above, however the Court must acknowledge that those circumstances apply in this current case. The other issue for

consideration is whether the suretor ought to be released from her obligations. Her evidence under oath was that she was of the impression that her sister would ensure that her nephew would comply with the bail conditions. Her Counsel Ms. Bridgewater noted that Ms. Duncombe works two(2) jobs in order to provide for herself and that her sole asset is her home which was used to secure the release of her nephew. The Court notes that too many people are willing to ensnare themselves in obligations without full regards to the consequences. Ms. Duncombe doesn't recall reading the bail bond and simply was seeking to assist her sister.

20. The Court takes note of the comments of the Court of Appeal in Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016 where President of Appeal Dame Anita Allen said as follows:

"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).

19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's right to remain at liberty is defeated by the public's 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 other offences..." 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).

20. The balancing of the applicant's right to the presumption of innocence and that of the public to be protected are reflected in the above-mentioned factors recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as

they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offences: ‘...the character or antecedents of the person charged, the need to protect 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.’” (Emphasis added)

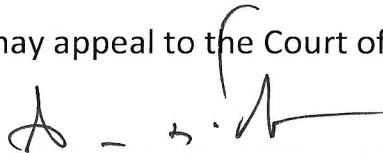
DISPOSITION

21. This Court given the circumstances will deny the application for bail for the current offense. This Court will note that although the Applicant has no antecedents the comments of the Court of Appeal in Tyreke Mallory v. The Director of Public Prosecutions SCCrApp No. 142 of 2021, will noted that this case was a case on Appeal from this Court and the Court of Appeal at paragraph 25 said as follows: *“In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial.”* The Court notes that the Applicant was already on bail and while on bail cogent evidence has been presented that this Applicant has not only violated the terms of his bail, but allegedly committed another offence. This Court is fully aware of the comments Justice of Appeal Evans and of the President Sir Michael Barnett of the Court of Appeal in Stephon Davis case (supra). Those comments are as follows: *“A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge.”* ... : *“This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been*

convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to show why there are good reasons to deny bail to a person charged with an offence.” The Court having considered the circumstances of this case and the evidence presented will not accede to the Application, however will invite the Applicant to reapply.

22. The Court will not revoke bail in the previous matter, however it will permit the suretor to be released and her documents to be returned. In those circumstances the Applicant will be required to obtain a new suretor(s) to satisfy the previous bail conditions.

23. Parties aggrieved may appeal to the Court of Appeal.



Justice Andrew Forbes

Dated the 16th day of May 2023