COMMONWEALTH OF THE BAHAMAS CASE NO. CRI/BAIL/FP/00171/2013

IN THE SUPREME COURT

Criminal Side

BETWEEN

DILLON JORDON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Attorney: Mr. Ellsworth. Darling c/o Director of Public Prosecutions

Attorney Mr. K Brian Hanna. Johnson c/o Dillon Jordon

Hearing Date: 6th June 2023, 20th June & 27th June 2023

RULING

Forbes. J.

BACKGROUND

1. The Applicant initially self-filed an application on the 8th March 2023 seeking consideration of the court as to the question of bail. On the 8th March 2023 Attorney Brian Hanna filed a Notice of Appointment of Attorney. A summons to admit to Bail and Affidavit in support of this application by the Applicant was filed on the 6th June 2023 and 7th June 2023 respectively. In which the Applicant avers that he was remanded on the charge of Murder. That he did not cause the death of Shavez Hart and that he is a fisherman. He further avers that he will not abscond nor will he interfere with witnesses. Further that he is innocent and he has now been advised that his trial is now scheduled to commence in 2027.

2. The Respondent filed an affidavit in response dated 15th June 2023 and sworn by Police Corporal 771 Anastasia Rolle who avers that she is the Liaison Officer of the Director of Public Prosecutions and that the Applicant was charged on 12th September 2022 with Offence of Murder. That the Applicant was arraigned before Magistrate Debbye Ferguson the charge sheet was exhibited thereto. Bail was denied and the Applicant remanded. That the Applicant is a person of bad character. That there is insurmountable evidence against the Applicant. That Traneko Grant positively identified the Applicant as the person who raised a firearm and shot the deceased. That the Applicant is said to have made an out of Court admission to Stephon Pritchard. The Statements of both witnesses are attached as exhibits. The Respondent further avers that the Applicant is not a fit and proper candidate for bail at this time.

SUBMISSIONS

5. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence. Counsel for the Applicant further contends that the Applicant has conducted himself in a peaceful and non-confrontational manner, inclusive of his arrest and incarceration. He further argues that there is no evidence to suggest that the Applicant is a serious threat to society. Prima facie every accused person is entitled to their freedom

until. No person should be punished by imprisonment before conviction. The essence of Counsel for the Applicant argument is that the Applicant is a fit and proper person for bail and should not be denied bail. The Counsel for the Applicant referred the Court to the cases of **Shamar Rolle v. Director of Public Prosecutions 2021/cri/bail//No. 00180 & Stephon Godfrey Davis v. The Director of Public Prosecutions 2014/cri/bail/00069** Both cases are cases from the Supreme Court and Stephon Davis was overturned by the Court of Appeal. It is unclear what authority Counsel for the Applicant wishes the Court to draw from either case.

6. The Respondents choose not to supply the Court with submissions or authorities and sought to rely solely upon the Affidavit filed on the 15th June 2023.

7. Taking the Respondents case at its highest it does not provide any evidence that the Applicant will not attend for his trial. Furthermore the evidence provided is scant and underwhelming and truly did not assist this court in arriving at the decision it was tasked with. The question as to whether there has been any delay? This issue was not raised either by the Applicant or the Crown. The Court does note that the Applicant was arrested on the 3rd September 2022, applied for bail on the 8th March 2023 and had a substantive hearing in June 2023. The question of delay does not therefore arise. The Court does take note of the comments made by Justice of Appeal Evans in **Duran Neely v. The Attorney General SCCrApp No. 29 of 2018,** where he said the following at paragraph 17:*" It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2) (a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail..."*

8. There has been multiple decision by the Court of Appeal of recent vintage and not so recent which has established what criteria a Court ought to consider when the issue of bail is being reviewed. In the Court of Appeal decision of ***Dennis Mather and the Director of Public Prosecution SCCrApp 96 of 2020*** the Court cited a number of cases as the starting point. ***"The main consideration for a court in a bail application is whether the applicant would appear for his trial."*** *In* ***Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008****, Osadebay, JA observed as follows:* ***"As stated by Coleridge J in Barronet's case cited earlier the defendant is not detained in custody 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."*** *In* ***Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011****, John, JA said as follows:* ***"12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses."***

LAW

9. The Court must now consider the rational for the denial of bail to the Applicant and consider whether the Applicant will refuse or fail to surrender for trial. Additionally it appears that the Respondent arguments are that the Applicant's antecedents that he has pending matters and that the evidence adduced is cogent and powerful should be grounds to deny the Applicant bail. The Applicant faces the charge of Murder an offence that has been included in Part C of the First Schedule of the Bail Act Part C states, inter alia as follows:- ***"PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed***

Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84."

10. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits to grant bail to those charged with a Part C offence***"(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), .r .. 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. (JA) 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.*** in addition to Part A Judges hearing a bail application for a Part C 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 purposes of taking the decisions required by this Part or otherwise by this Act; (c) 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."; offence must exercise their discretion to issues such as character and antecedents, the need to protect the safety of the public or public order and also to consider the need to protect the safety of victim of the alleged offence or for his own protection as well the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

ANYALSIS & DISCUSSION

11. Thus the question whether the Applicant would surrender for trial? The Respondent offers no evidence to suggest that the Applicant would not in fact surrender. The Affidavit is totally devoid of any evidence that the Applicant might not surrender for trial. They however focused on the evidence. The Crown also focuses on the fact that given the allegations made against the Applicant that he is a threat to the society. It might be inferred that given the very cogent evidence and the statement against interest made by the Applicant that the Applicant is not a fit person for bail. There are certain cautions to observe. Firstly the statement may very well be challenged that the witnesses are not credible or that the witness fabricated the alleged out of Court admissions, those are issues for the jury. The Court takes notes of the comments of the Court of Appeal in **The Attorney General v. Bradley Ferguson etal 57, 106,108,116 of 2008** and particular paragraph 35 which reads in part as follows: ***"That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that in order to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to***

release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam release on bail was thought proper in circumstances where the evidence against the accused was comprised of accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial."

12. In this case there are strong eyewitnesses to the shooting such as the Traneko Grant who in his statement acknowledged he saw the Applicant fire a weapon at the deceased. He also acknowledged that he knows the Applicant for at least ten (10) years and picked him out a photo array. Now why a photo array as opposed to an Identification Parade may at some point become a contentious issue to be resolved by the Court at Pre-Trial. Further the Court is aware that directions will likely be required should the matter go to a jury as to witnesses and identification noting that some witnesses come with flaws, but those are issues for a jury to determine. There is also the purported admissions made by the Applicant where according to another witness the Applicant didn't admit to shooting the deceased but claimed he "busted off a shot" these statements are subject to its challenge, so unlike **Ferguson's case** there is strong and very cogent evidence. The second issue is the statements of the particular witnesses. In the case of Traneko Grant he reports interceding in an altercation between the Deceased and another individual where he then observed when the Applicant is alleged to have raised a firearm and shot it at the deceased.

13. The final issue raised was the seriousness of the offense and the cogency of the evidence. In this regard this court will noted the statement of the Court of Appeal in **Stephon Davis v. The Director of Public Prosecution SCCrApp. No.108 of 2021**, where in the headnote the Court of Appeal said as follows: - ***"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible,***

ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."

14. As stated in **Davis case (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. There is however very strong and cogent evidence, thus the question is whether there are condition which will ensure that this Applicant does not engage in any further violent actions. It is clear from the statements exhibited that the Applicant and the Prosecution witnesses are familiar with each other. No evidence was lead or suggested that the Applicant will interfere with the Prosecution witnesses. As previously stated the offence of Murder is a serious offence, one that carries a possible penalty of life imprisonment. The seriousness of such may give cause for any defendant to abscond if released on bail. The Court's role as stated above is not as a fact-finder or a seeker of the truth at this stage. However, the Court must weigh the Applicant's presumption of innocence and right to liberty against the public's safety and order.

15. The allegations as stated above against the Applicant are serious, more so there is no evidence before the Court that the witnesses who implicate him have recanted their statement or their statements have changed dramatically from when they were first given. Additionally, I have found that the prima facie evidence against the Applicant is strong. Further, the alleged actions of the Applicant on that night i.e. shooting a gun in a public space clearly with multiple people around was reckless and extremely dangerous. The Court thus has reason to believe that the Applicant has a wanton disregard for human life. The question is whether the Applicant can be compliant should he be granted bail the Court is prepared to consider whether stringent condition if imposed would prevent any further incidents. Those conditions to be considered whether the imposition of electric monitoring devices (EMD) or curfew conditions would suffice. This Court finds that the measures permitted are likely to restrain this Applicant. There is no evidence that the Applicant has antecedents or pending matters. That no evidence was presented that the Applicant had any gang affiliations. This Court reminds itself of the comments made by the Court of Appeal in **Tyreke Mallory v Director of Public Prosecutions SCCrApp. No 142 of 2021** Justice of Appeal Evans noted as follows at paragraph 25: ***"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…"

16. That taking note of the above case the Court is reasonably satisfied that stringent conditions will ensure that the Applicant does not engage in further reckless or unlawful actions.

DISPOSITION

17. In the circumstances the court will accede to this Application for bail.

18. The Court will grant bail to the Applicant in the sum of Twenty Five ($25,000.00) Thousand Dollars with one (1) or (2) suretor;

19. The Applicant is to be outfitted with an Electronic Monitoring Device (EMD) and comply with all conditions thereto. Further the Applicant is placed on curfew in which the Applicant must remain at his registered address between the hours of 10pm to 5am Monday to Sunday.

20. That the Applicant is required to report to the Coopers Town Police Station nearest to his registered address each Monday, Wednesday before 7pm at the latest.

21. That the Applicant is to have no direct or indirect contact with any of the Prosecutions witnesses whatsoever any violations could potentially result in revocation of bail.

22. The Parties are at liberty to apply for variations should circumstances permit.

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

Dated the 11th July, 2023

Andrew Forbes
Justice of the Supreme Court