

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/2022

BETWEEN

DOMINIC STUART

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns

Appearances: Dr. Glendon Rolle for the Applicant
Mrs. Eleanor Pintard and Mr. Levan Johnson for the Respondent

RULING - BAIL

Archer-Minns J

1. Dominic Stuart, the Applicant (the “**Applicant**”) in these proceedings has been charged being concerned with others with Conspiracy to Commit Armed Robbery, Armed Robbery (3 counts), Kidnapping and Money Laundering on 30 December, 2021. He has made application for admission to bail via Summons and Affidavit filed on 25 February, 2022.
2. The Applicant has no previous convictions only a pending matter of Armed Robbery and Attempted Murder in 2018 for which he was granted bail.

The Applicant asserts in his Affidavit the following:

- i. he is 28 years of age, a citizen of The Bahamas and born in New Providence;
 - ii. has no previous convictions but a pending matter;
 - iii. believes he will continue his employ as a Stewart with Bahama Resort if granted Bail;
 - iv. has accommodations at Forest Exuma, his usual place of residence if granted bail;
 - v. his mother Bernadette Stuart is prepared to stand as his suretor;
 - vi. he has one child and a loving family who depends on him emotionally and financially;
 - vii. he will be disadvantaged in his ability to adequately prepare his defence is further remanded.
3. Counsel for the Applicant further contended that there is a constitutional presumption of innocence and bail should only be denied where the Court accepts as more probable the substantial grounds relied on by the Respondent (***Attorney General v Bradley Ferguson No. 57 of 2008 CA***). Additionally that strong and cogent evidence is not tested at this application and the nature and strength of the evidence coupled with its consequence is but only one consideration in the scheme of things for the Court’s consideration.
 4. Counsel continued that the likelihood of the Applicant committing an offence while on bail does not in and of itself provide just cause for his detention and in the

instant case, the Applicant has no previous convictions only pending matters which have yet to be heard which is a strong factor in favour of the Applicant. There is also no likelihood of him absconding as he enjoys a stable life with his family, has strong ties with The Bahamas and none elsewhere nor does he have the means to abscond. Remaining in custody has caused his family hardship and the imposition of stringent conditions would dismiss the substantial grounds relied upon by the Respondent.

5. In relation to the likelihood to interfere with witnesses and obstruct the course of justice, Counsel for the Applicant advanced that at the time of this application, there has been no allegation of interference or acts by the Applicant that seek to subvert the course of justice. Neither has the Respondent stated so in the Affidavit it relies upon which suggests this likelihood is negligible. There has also been no instructions from the Applicant of any threats of harm or death made against him prior to or post his detention nor has anything been suggested by the Respondent of threats toward either the victims' family or the Applicant.
6. Counsel concluded that the Applicant ought not to be denied bail simply because the charge is a Part C offence but rather if there are substantial grounds that he would not appear for his trial and in this instance there is no evidence that the Applicant would not. Also noted is the fact that a trial date has not yet been set in this matter and the pending matters are still outstanding for over three (3) years. Further the COVID-19 pandemic has also made it even more unlikely to have matters proceed. Appropriate conditions can be imposed in this instant case.
7. Counsel finally contended in all of the circumstances of the case, the Applicant ought to be admitted to bail.
8. Counsel for the Respondent objected to the granting of bail supported by an Affidavit of Inspector Demetrius Taylor, filed 14th April, 2022 asserting *inter alia*,
 - i. there is sufficiently strong circumstantial evidence from the virtual complainants detailing the events that transpired the evening in question at their home and at their business QBC at the Mall at Marathon and being robbed of cash, a vehicle and other valuable personal items, along with being held at gun point, scared with a blow torch, gagged, taped, Andrew Wilson

burnt by the blow torch used by the perpetrators and also the alleged rape of Julieca Wilson;

- ii. there is also cogent evidence linking the Applicant to the respective crime through his own record of interview with police on the 30th December, 2021, relaying that around 7:40 pm with the use of his mother's white Toyota Belta vehicle he and others armed with a firearm went to a residence in the Ocean View drive area, parked the vehicle at the rear of the residence and waited for the occupants to come home. Once the first arrived, that being Marcus Wilson, they began the robbery and attack on all of the occupants, their home and business;
- iii. there is also strong circumstantial evidence by Sergeant 2678 Chase who found the Applicant's Mother's car on the day in question sometime around 6:44 pm at Atlantic Drive, West Ridge and was discovered unoccupied with keys in the ignition. The vehicle was searched and a number of documents found in the name of the Applicant's mother, Barbara Percentie and himself. Also found was the Applicant's cellular phone. The Applicant's mother was called and she confirmed that the car belonged to her and that her son was using it. There is also the evidence of Mr. Rupert Adams, an on duty security Officer at the Mall at Marathon who in passing by saw Mrs. Susan Wilson duct taped at the mouth in the rear seat of her husband's jeep utilized by the perpetrators and who alerted the on duty Supervisor of what he saw;
- iv. there has been no unreasonable delay in proceeding to trial as the alleged offence occurred the 30th December, 2021. The Applicant was arraigned in the Magistrate's Court and the matter has been adjourned for the presentation of the Voluntary Bill of

Indictment. There is nothing to suggest that there will be any unreasonable delay in the matter proceeding to trial;

- v. the offences with which the Applicant is charged are very serious and the manner in which it was carried out was very heinous as the virtual complainants were in the sanctity of their home or just arriving at their home from work sometime after 7:00pm and forcefully tied up and robbed by culprits who were armed with a firearm and a blow torch, who demanded money and warned the victims not to do anything stupid otherwise they would be killed;
- vi. the Applicant has pending matters for Armed Robbery and Attempted Murder and this present offence was committed with a firearm, it shows a propensity to reoffend and commit offences of a similar nature. On oral submissions the Respondent reminded the Court that the Applicant was on Bail when the current charges were given and ought to be considered;
- vii. the Respondent further fears that there may be witness interference where the Applicant knows both the business location and residence address of the virtual complainants and admitted in his record of interview. That he and another accomplice rode with Mr. and Mrs. Wilson to their business and the alleged incident commenced at the victims residence. Also one of the armed robbers told Mr. Wilson, that he knew who he is was and that he was the owner of QBC;
- viii. the Applicant is charged with serious offences and if convicted faces a lengthy penalty, which in of itself is an incentive for the Applicant to abscond. On oral submissions, the Respondent also relayed that the Applicant has confessed to the crimes.

9. In all of the circumstances of the case, Counsel for the Respondent contended that the Applicant ought not be admitted to bail.
10. Upon review of the Affidavits and considering the oral and written submissions of counsel for the Applicant and Respondent, the court has determined that given the nature and the seriousness of the charges, the strength of the evidence along with the Applicant's Record of Interview outlining his part in the events, his criminal history or lack thereof and the fact these events transpired while the Applicant was on bail, the Court is of the view that it ought not exercise its discretion to grant the Applicant admission to bail at this time. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

The Constitution

11. The Applicant enjoys the presumption of innocence and has a right to apply for bail. Section 20 (2) (a) of the Constitution states that: **“Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty.”**

The Bail Act (1994) (as amended) (the “Bail Act”)

12. The granting of bail is a discretion exercised by the courts, the Bail Act however, gives guidance on factors that should be considered in cases where Part C offences are before the court. Sections 4(2), 4(2A) and 4(2B) of the Act provides as follows:

(2) Notwithstanding any other provisions 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;

(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 a written statement giving 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 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.

13. Part A of the Bail Act states as follows:

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.

Discussion and Reasoning

The Bail Act

Trial within a Reasonable Time

14. In accordance with the Bail Act and Article 19(3) of the Constitution, a person charged with an offence who cannot be tried within a reasonable time, should receive bail. However, if they can be tried within a reasonable time, the court should move on to give consideration to sections 4(2B), 4(2C) and Part A of the Act in order to make a determination as to whether an applicant is a fit and proper candidate for admission to bail (*Duran Neely v The Attorney General Appeals No. 29 of 2018*).

In the instant case, the alleged offences occurred on 30 December, 2021, the Applicant has been charged and awaits service of his Voluntary Bill of Indictment and trial date. Unreasonable delay at this juncture is therefore not an issue.

Previously granted bail and now charged with similar offences (Character/ Antecedents)/Commit an offence while on bail

The character or antecedent of the person charged is a primary consideration but this factor alone does not automatically result in the release of a person on bail. The Applicant has no previous convictions but a pending matter for Armed Robbery and Attempted Murder. Bail would have been granted with conditions and the Applicant now stands before this Court seeking bail on another similar charge.

Failure to surrender to custody or appear at trial

15. Part A of the Bail Act requires the court to consider whether there are substantial grounds for believing that, if released on bail the Applicant would fail to surrender to custody or appear at his trial or interfere with witnesses.

16. It is an established practice concerning bail applications that the appropriate test for granting bail is whether or not a court is of the view that the applicant will or will not appear for trial (*Jeremiah Andrews v The Director of Public Prosecutions* [1937] 2 All ER 552).

17. The Applicant's counsel advanced that the Applicant will not abscond due to a stable family life, has strong ties to the Bahamas and not having the means to abscond. Counsel for the Respondent contended that the Applicant is charged with serious offences and if convicted faces a lengthy penalty which is sufficient a reason to abscond. There has been nothing else proffered to suggest he will not attend at trial.

18. The court has also taken into consideration the conditions in the case of *Jeremiah Andrews* but these are factored along with other factors which must also be considered when granting bail and not in isolation.

Interference with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

19. The Applicant's Counsel has asserted that there is no allegation of interference or acts by the Applicant that seek to subvert the course of justice and the Respondent fears that there may be interference particularly since the Applicant knows both the business and the residential addresses of the virtual complainants. However apart from these assertions there was nothing else advanced by the Respondent to suggest the likelihood of any interference of the witnesses by the Applicant or others acting for or on his behalf.

The Nature and Seriousness of the Offence and Nature and Strength of the Evidence

20. It is no doubt that the offences of Conspiracy to Commit Armed Robbery, Armed Robbery (3 counts), Kidnapping and Money Laundering are serious offences but are bailable offences and certainly cannot be the sole reason to deny bail.

21. Recognizing, that Bail hearings should not constitute mini trials (Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008), it is also important that the court considers the strength of the evidence in accordance with the Bail Act. In Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016, Allen P stated that:

“The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

22. There is reasonable suspicion on the evidence before the court as to the commission of the offence by the Applicant. This suspicion arises from the statements of the virtual complainants who provided in great detail what occurred as well as the build of the perpetrators albeit unable to see their faces except for one of the witnesses who was able to see the face and distinct mark of one of the perpetrators.

23. However, more convincing is the Record of Interview by the Applicant detailing the car used (that being his mother’s) for the orchestration of the crime, who had which weapons and how they would be used, what they wore, the plan of the events, the items stolen, details concerning the rape, events after the crimes, how they were able to get away without his mother’s car, what was done with the stolen items and who orchestrated the events. Additionally, the evidence of Sgt. 2678 Chase locating the Applicant’s mother’s car with keys in the ignition and the vehicle running and confirmation of ownership. Finally, there is the evidence of Mr. Rupert Adams, mall security guard who witnessed Mrs. Susan Wilson who he came to know and was familiar with because of the family’s business at the Mall, duck taped at the mouth in her husband’s jeep outside the mall as the perpetrators sought cash from the family business and who alerted his supervisor right away which is consistent with the statement of the Applicant to Police.

Conclusion

24. The relevant provisions of The Bail Act having been considered together with the Affidavits of both Counsel and their respective submissions, the court so finds that unreasonable delay is not an issue in the instant case and therefore gave consideration to the following factors:

- i. the serious nature of the offences;
- ii. the strength of the evidence against the Applicant - which evidence the court notes is more significant against this Applicant than it was for the co-accused Akandi Gibson as disclosed by the Affidavit in Response for Gibson's bail application. The strength of the evidence of the current offences was considered together with the pending offences;
- iii. the antecedent of the Applicant and breach of previous bail conditions - the court fully appreciates that the Applicant has no previous convictions but does have pending matters similar in nature to those pending for the co-accused, Akandi Gibson who was granted bail. The other co-accused Randy Williams had none;
- iv. the competing interest of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;
- v. the safety of the virtual complainants and prosecution witnesses who are pivotal to the proper adjudication of this matter, the events occurring in the confines of their home and the breach of the sanctity of same and the safety of the Applicant for relaying details of the events via his Record of Interview;
- vi. the bail conditions which could be imposed.

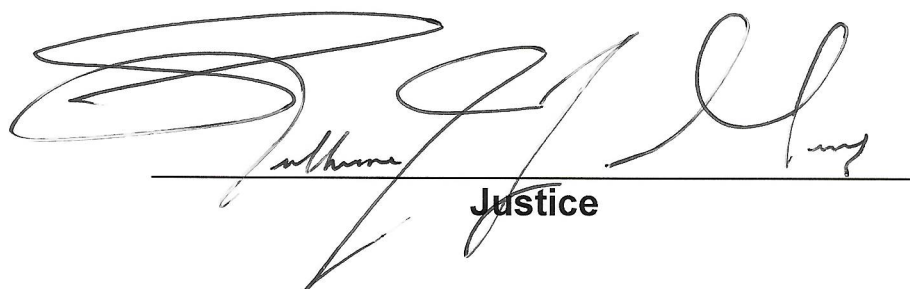
25. The Court having given consideration to the aforementioned and being cognizant that whilst there is no evidence adduced before it as to the likelihood of the Applicant absconding or not appearing for trial or breaching conditions imposed, the court is of the view that given the circumstances of this case, the strength of the evidence as against the Applicant (no doubt which will have to be tested during trial and how that may or may not impact the other defendants), the vulnerability of the witnesses particularly since the witnesses and their business and home addresses are known to the perpetrators; notwithstanding, that the Applicant has no previous convictions not because he has none, doesn't mean that should be the sole basis for which he is granted bail nor that his co-defendants have been granted bail. Other factors must be taken into consideration and each case must be determined on its facts or merits.

There is a heightened risk in the court's view for the safety and protection of witnesses as well as for the Applicant himself, in light of the evidence brought to the court's attention. I do not think, that the imposition of reporting conditions,

curfew or the ordering of an Electronic Monitoring Device would be effective measures to prevent witness interference or the commission of other offences. The Electronic Monitoring Device which is regularly ordered by the court is merely a tracking device which in recent times has been reported to be increasingly removed by offenders and does not prevent the commission of offences.

In all of the circumstances of this case, the court is of the view that it ought not exercise its discretion to grant bail. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 18 day of May, 2022.



A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be 'Justice'. Below the signature, the word 'Justice' is printed in a bold, black, sans-serif font.

Justice