

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00314/2015

BETWEEN

DOMINIQUE ROLLE

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Ian Cargill for the Applicant
Mrs. Eleanor Pintard, Mr. Mark Penn & Ms. Davina Pinder for the Respondent

Hearing Date: 15 December 2021

RULING - BAIL

Archer-Minns J

1. By Summons file 24 November 2021 the Applicant, Dominique Rolle made application for admission to bail having been charged with two counts of Murder contrary to section 291 of the Penal Code, Chapter 84 and two counts of Attempted Murder contrary to section 292 of the Penal Code, Chapter 84.
2. Counsel for and on behalf of the Applicant relied principally on the contents of the Affidavit in Support of application for bail filed on 24 November 2021. In addition thereto, Counsel submitted inter alia: (oral submission were to the extent that:
 - (i) the Applicant was arraigned before the Chief Magistrate in 'court NO. 9 on 20 May 2021;
 - (ii) the matter was adjourned to 29 November 2021 for the presentation of the Voluntary Bill of Indictment and was subsequently adjourned to February 2022 for presentation of same;
 - (iii) Applicant is on bail for pending matters not of a similar nature to the offence for which bail is being sought;
 - (iv) There is no cogent evidence against the Applicant;
 - (v) Applicant is a fit and proper candidate for the admission to bail in all of the circumstances ought to be granted bail.
3. The Crown opposed the application and relied on the Affidavits of Inspector Jamal Evans and ASP Evans Oralhomme filed on 13 December 2021. The testimony of ASP Oralhomme was to the extent that he was attached to the Central Intelligence Bureau. He being the Director of the Justice Protection Unit/Witness Protection and has been for twenty-two years plus. A position which requires him to manage intelligence and upon completion of obtaining the necessary intelligence to disseminate same for action in order to aid in proactive policing. As such, he was requested by the Attorney General's Office to prepare an Affidavit with respect to the matter before the court.
4. The Affidavit filed on 15 December 2021 avers in part:
 - (i) the Applicant is Dominique Deon Rolle;
 - (ii) the Applicant's date of birth is 18 July 1996;

- (iii) the Applicant is also known by the street alias “D-Money/Bungles”;
- (iv) the Applicant came to the Bureau’s attention since 2017 being involved in gang activity, associated with the Fox Hill Outlaw Gang, (FHOLG) an arm of the One Order gang. Also he is known to have affiliation with the Grove Hot Niggas Gang – GHNG;
- (v) that since 2017, the Bureau conducted enquiries with a view to establishing the Applicants role, associations, allegiance and any activity associated with an illegal gang;
- (vi) the Applicant being a member of the FHOG with affiliations with GHNG and One Order gang whose functions are inclusive of, but not limited to shootings, armed robbery, firearm possessions, shop/house breakings, stealing and are street enforcers;
- (vii) the Applicant is also a part of a stealing ring, responsible for stealing from vehicles and is a high level street enforcer for this gang;
- (viii) that the Bureau established this gang has ties with drug supplier Stephen Die Tiger Stubbs a convicted felon presently serving time at the Bahamas Department of Corrections for Murder;
- (ix) that the Applicant is presently being housed in cell 116 of the I section of the prison which exclusively house members of the One Order Gang and their affiliates;
- (x) the Applicant because of his alleged involvement with the death of Akeem David who is the brother of another notorious gang member Stephen “Crime” Davis, there is a high threat against his life.

5. The Affiant was cross-examined by Defence counsel with respect to the Applicant’s address and his place of employment prior to his incarceration which the Affiant was unable to provide. Nor was he able to provide for Counsel documentation substantiating that the Applicant was apart of the One Order Gang. He did maintain under re-examination that all the intelligence gathered was in respect to the Applicant before the court, Dominique Rolle.

6. In the Affidavit of Inspector Jamal Evans filed on 13 December 2021 he averred essentially:
- (i) that there is strong and cogent evidence from the virtual complainant, Mr. Shakeem Campbell, indicating that the Applicant was the driver of a silver Honda Fit from which a lone male exited from the left passenger side and pointed a gun, firing in the direction of the virtual complainant and others present in the Third Street area of The Grove on Friday 14 May 2021;
 - (ii) the male shooter, the virtual complainant was unable to identify but did identify the Applicant whom he knew as Bungles for over four years through his visitation with a mutual friend of theirs;
 - (iii) the virtual complainant was visited by officers at the Princess Margaret Hospital on Monday 17 May 2021 and was shown a twelve man photo lineup. He identified the Applicant in photo #12 as the person he knows as Bungles, the driver of the vehicle which left the scene with the shooter;
 - (iv) the scene and the virtual complainant's vehicle were processed and sixteen (16) spent casings of 40 and 45 caliber and six (6) fired bullets were collected at #62A Third Street, The Grove;
 - (v) the manner in which this offence was executed shows a blatant disregard for public safety as it was stated that there was a gathering of persons in the yard, in a residential area and subsequently lives were lost and others were seriously injured;
 - (vi) the offence occurred on Friday 14 May 2021, the Applicant was arrested, charged and arraigned before Magistrates Court on May 20 2021. The matter has been adjourned for the presentation of a Voluntary Bill of Indictment. As the Applicant has not yet been presented with a Voluntary Bill of Indictment nor formally arraigned before the Supreme Court for this offence, there has been no unreasonable delay in the prosecution of this matter;
 - (vii) the Applicant was on bail when he was charged for this present offences;
 - (viii) that contrary to what was averred in paragraph 8 of the Applicant's Affidavit that the Applicant has a previous conviction is incorrect, he

has in fact two previous convictions for stealing 6 June 2020 and receiving 10 February 2020;

- (ix) that contrary to what the Applicant alleges in paragraph 9 of his Affidavit, the Applicant has three pending matters before the court in The Commonwealth of The Bahamas;
- (x) that the Applicant is charged with serious offences and if convicted, faces a lengthy penalty, which provides an incentive to abscond’;
- (xi) given the present circumstances, the Applicant being charged with offences whilst on bail, his alleged involvement in gang activities and his having previous convictions, the Applicant is not a fit and proper candidate for bail.

7. Counsel for the Crown finally submitted that there is a high risk on the life of the Applicant given his alleged involvement with gang activity and the death of Akeem Davis

In all of the circumstances of this case, the court ought not to exercise its discretion in granting the Applicant bail.

The Law:

The Constitution gives this Applicant the right to apply for bail. Article 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**

In any application for bail, The Bail Act (1994) (as amended) (the “Bail Act”) must be considered. The Applicant herein has been charged with two counts of Murder and two counts of Attempted Murder. As such, the relevant provisions of Section 4(2), 4(2)A, 4(2B) and Part A of The Bail Act must be considered.

The section reads as follows:

4(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)

(c) shall 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 antecedent of the person charged, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.

Part A of the Bail Act provides 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.

Analysis and Discussion:

8. The evidence before the court in relation to this application is a statement from one of the virtual complainants, Shakeem Campbell who on the evening of Friday 14 May 2021 was in the area of Third Street, The Grove, when he observed a very lightly tinted Honda Fit pull up. A lone male exited the passenger side of the vehicle pointed a gun in the direction of Shakeem Campbell and others and fired upon them. Shakeem Campbell ran for cover to the right front passenger door of his vehicle where the male continued to fire a number of shots in their direction. It was at this time he was able to see the driver of the silver Honda Fit who was about thirteen (13) feet away from the vehicle of Shakeem Campbell. The driver was an individual known to him as Bungles whom he described as being about six (6) feet, thick built with tattoos on his body. He claims to know that Bungles was arrested a month ago for firearm and lives in the area of Mikes Chinese Restaurant and frequents the residence of Malorie Jr. The virtual complainant further indicates his inability to identify the shooter because he was running and couldn't get a good look at his face. However he is able to positively identify the driver who was Bungles as he has known him for the past four years during his visits with a mutual friend. On 17 May 2021, the virtual complainant identified photo #12 from a twelve man photo lineup as the person he knows as Bungles and the driver of the vehicle which left the scene with the shooter.

9. Fully appreciating that it is not the function of the Bail Judge to thoroughly evaluate evidence, it is however necessary to look at its strength in order to exercise the discretion as to whether or not bail should be granted to the Applicant.

10. In *Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016* Allen P stated:

“It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. 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.”

11. The evidence before the court suggest that the Applicant was the alleged driver of the vehicle from which the male shooter emerged and fired upon persons resulting in the lost of lives and serious injury to others and as such was possibly concerned with the shooter in the alleged commission of the offences. If accepted at face value, the evidence of the virtual complainant is cogent and is sufficient to possibly connect the Applicant to the offences subject to the Applicant being charged as being concerned together with another identified or unidentified – his role being that of the get away driver.

12. The court in *Johnathan Armbrister v. The Attorney General SCCrApp No. 45 of 2011* stated:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail”.

13. The offences with which the Applicant is charged are very serious and though the court must consider this, it cannot be the basis for its decision but does weigh heavily in the scale against the grant of bail.

14. In accordance with the Bail Act, the court is required to give consideration to if the Applicant would commit an offence whilst on bail. The Applicant herein at the time of the alleged commission of these offences for which he seeks bail was on

bail with stringent conditions attached. On 20 December 2016, the Applicant was granted bail for Attempted Murder and Attempted Armed Robbery before Frazer J. Conditions attached were (i) report to the police station twice per week (ii) be outfitted with an Electronic Monitoring Device and (iii) not interfere with witnesses.

15. On 26 June 2020 whilst on bail for the aforementioned offences, the Applicant was again granted bail by Hilton J for two counts of Possession of a Firearm with Intent to Endanger Life. Conditions attached were (i) report to the police station three times a week (ii) be outfitted with an Electronic Monitoring Device and (iii) non interference with witnesses.

16. In both instances when bail was granted, stringent conditions were attached. The Applicant nevertheless finds himself before the court once again. Interestingly Counsel for this Applicant asserted that the Applicant was not outfitted with an Electronic Monitoring Device. Seemingly the court's order was not complied with from the initial grant of bail as the Applicant, given the terms of bail ought to have been out fitted with an Electronic Monitoring Device. There is no indication that there is any subsequent order from the court for the removal of same by either of the Justices. If Counsel for the Applicant is correct, the question is why wasn't the court's order complied with or alternatively why was the Applicant not wearing an Electronic Monitoring Device as so ordered.

17. The Court also take note that the Applicant has an antecedent dated 14 December 2021 reflecting convictions for Stealing and Receiving in 2018 and 2020 respectively. The Applicant was fined or in the alternative sentenced to a term of imprisonment. There is also the indication of a charge of Possession of a Firearm and Ammunition dated 7 December 2021 as well as Assault with a Deadly Weapon dated 7 December 2021 and Unlawful Sexual Intercourse dated 7 December 2015. In the latter two cases, Voluntary Bill of Indictments have been served.

18. According to the case of *Stephen Godfrey Davis and The Director of Public Prosecution* SCCrAPP No. 108/2021 “the antecedent of an Applicant for bail is an important factor to be taken into account by a court considering the application. The record may provide a barometer for the likelihood of the applicant to commit other offences whilst on bail.”
19. The Court in *Stephen Davis* went on to further explain that certain offences should not be given much weight such as Vagrancy. In this instant case, the Applicant has been convicted of Stealing and Receiving, offences which the court considers sufficiently serious so as to be given the appropriate weight during its consideration. Further, they along with the other pending charges provide a barometer for the likelihood of the Applicant to commit other offences whilst on bail.
20. The Court is indeed cognizant that the main purpose of bail is to ensure that the Applicant will appear for his trial. In addition thereto, the Applicant is to be presumed innocent until proven guilty or pleads guilty. This presumption of innocence and the right of the Applicant to his liberty weighs significantly in the court’s consideration but must also be balanced and considered with the competing rights of the public, its safety and security. The decisions of Richard Hepburn and Jevon Seymour considered.
21. In *Hurnam v The State of Mauritius 2006 WLR* Lord Bingham speaking to the Board stated:
- “It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail The***

seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well provide grounds for refusing bail but they do not do so of themselves without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.”

22. The Court having given due consideration to the affidavits of both the Applicant and Respondent, the submissions of Counsel, the relevant provisions of the Bail Act, antecedent of the Applicant and referenced authorities, the court is minded to exercise its discretion to deny the Applicant bail for the following reasons:

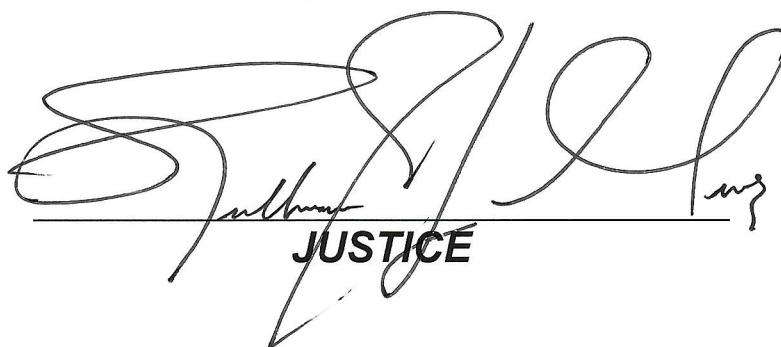
- (i) the offences for which the Applicant has been charged are serious in nature giving the Applicant an incentive to abscond if convicted;
- (ii) the evidence adduced before the court is cogent;
- (iii) the Applicant was previously on bail with stringent conditions attached and is nevertheless before the court on more serious charges. This is a clear indication to the court that even with the imposition of stringent conditions such have not minimized the risk involved with the granting of bail to the Applicant;
- (iv) the court is concerned for the well being and safety of not only the Applicant but also the potential prosecution witnesses particularly given the affidavits of ASP Evans Oralhomme and Inspector Jamal Evans as to the Applicant's alleged association with varying gangs throughout the community.

23. The Court is mindful of the effect of gang activity in the community and its clear destructive and present danger in society is resulting in heinous and callous acts upon life and property. The public safety, the safety of the virtual complainant and that of the Applicant may be better safe guarded by the court not exercising its discretion to grant the Applicant bail at this time. Gang activity and revenge

retalitory attacks are real live issues which cannot be ignored by the Court at this time.

Bail is denied. The Applicant is at liberty to reapply should there be a change in circumstance in the interim.

Dated the 2 Day of February, 2022



A handwritten signature in black ink, appearing to read "Anthony J. Long", is written over a horizontal line. Below the line, the word "JUSTICE" is printed in a bold, black, sans-serif font.