

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2023/CRI/BAL/00068**

BETWEEN

CHRISTOPHER DAMETRIO CARTWRIGHT

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Senior Justice Bernard Turner

Appearances: Mr. David Cash for the Applicant

Mr. Kenny Thompson for the Respondent

Hearing Date: 10 May 2023

RULING

TURNER Snr J

The applicant herein applied for bail, by way of a summons, supported by an affidavit, both filed 18 April 2023, in respect of charges of murder and armed robbery. The information provided in respect of this application can be described as pithy at best, but in respect of the murder allegation, that is alleged to have occurred on 21 November 2021.

2. The affidavit in support of his application reads:

“2. I am a Bahamian citizen, born on 3rd September, 1999

3. I am 23 years of age.

4. I make this affidavit in support of an application for bail.

**5. I stand charged and remanded on the following offence:
Murder: contrary to section 291(1)(b) of the Penal Code;
Chapter 84.**

**Armed Robbery: contrary to section 339(2) of the Penal
Code; Chapter 84.**

**Attempted Armed Robbery: contrary to section 83 and
339(2) of the Penal Code; Chapter 84.**

**6. I was charged in the Magistrate's Court before Stipendiary and
Circuit Magistrate Vogt-Evans and was denied bail, and advised
that I can apply to the Supreme Court for bail.**

**7. I am scheduled to return to that court for a VBI presentation on
27th April, 2023.**

8. If granted bail I would reside at #12 Windsor Lane, New Providence

9. Prior to my arrest and remand, I was employed as a mechanic.

10. That I am not a flight risk and will abide by my obligations to the court if granted bail.

11. That I have been in custody since 24th February, 2022.

12. That I have previous convictions of a minor and dissimilar nature (simple assault, deceit of a public officer and receiving).

13. That I have no pending matters before the Supreme Court.

14. That the evidence against me is weak.

15. That I have a 3 year old daughter who relies on me for financial and emotional support

16. That I maintain my innocence against this allegation and I am eager to defend myself against this charge.”

3. The affidavit in response indicated that:

“3. That I have read the Affidavit filed by and on behalf of the Applicant' and save as hereinafter stated, no admissions are made regarding the assertions contained in the affidavit of the applicant in this matter.

4. That the Applicant was charged with one (1) Count of Murder and one (1) Count of Attempted Armed Robbery and One (1) Count Armed Robbery. See now here a copy of the Indictment

sheet and the antecedent Form of the Applicant attached to this file and marked "KM. -1" and "K.M 2".

5. That there is strong and cogent evidence against the Applicant. An Anonymous witnesses saw the Applicant wearing a grey hooded jacket with no facemask walking with a firearm in his hand approached the Decease and discharged several shots at him. While the Applicant was walking the witnesses got a clear view of his face as he was no more than 12ft away. The Applicant was under their observations for about six (6) seconds, and they positively identified the Applicant in a twelve (12) men photo line up.

6. That the Applicant has an outstanding warrant for failing to attend court #10. Therefore, its evident that the Applicant does not honor the courts' conditions and might not attend court.

7. That given the severity of the penalty for the offence for which the Applicant stands charged the Respondent verily believes the likelihood of being convicted provides within itself sufficient incentive for the Applicant to abscond.

8. That the Respondent avers that there has been no unreasonable delay in proceeding to trial as he was only arraigned on 27th April, 2023.

9. That there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified and that there has been no unreasonable delay.

10. That in the interest of the public, the Applicant ought not to be given bail.

11. That I further make this application in opposition to the Applicant's application for bail as stated in Section 4(2) of the Act as it related to Part C Offences under the First Schedule of the Bail Act which states that:

"bail shall not be granted, unless the Court 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.

12. The Respondent wishes to rely on the First Schedule Part A as substantial grounds for believing that should the Applicant be granted bail :-

1. He would fail to surrender to custody;

2. Commit an offence while on bail; and

3. That the Court should consider the nature and seriousness of the offence.

13. That the contents of this Affidavit are true and correct to the best of my knowledge, information and belief."

4. Having regard to the issues for a court to consider on an application for bail, section 4(2) of the Bail Act states:

“4. (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 ;

(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),.....”

5. Sub-section 4(2B), reads:

“(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.”

6. The First Schedule Part A of the Act outlines the relevant factors that the Court must consider in an application for bail. Part A of the First Schedule states:

“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);

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e);

(f);

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant;”

7. There is an evidential burden on the Respondent to prove that the Applicant would fail to surrender to custody, appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was observed in the Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. There, the Court was tasked with determining whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 of the judgment, Crane-Scott, J.A. stated:

“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise

obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence (emphasis added)."

8. In **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019**, Evans JA expressed the following, at paragraph 26:

"In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence (emphasis added)."

9. The Privy Council, in **Hurnam v. State of Mauritius [2006] 1 WLR 857** stated at paragraph 15:

"15. 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 drugs 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...(emphasis added)”

10. **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** clarified the extent of a judge's task in relation to the evidence which is adduced at a bail application, per Allen P.:

“34. 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 (emphasis added).”

11. According to the Applicant's affidavit, he states that he is not a flight risk and will abide to all obligations of the Court if granted bail. He states that he has a 3 years old daughter who is financially and emotionally dependent on him and that he maintains his innocence. He also states that the evidence against him is weak and he acknowledges that he has a previous convictions, which are described as minor and dissimilar. His antecedents confirms that he was convicted for Deceit of a Public Officer in 2018 and fined, convicted for Stealing in 2018 and fined, and convicted for Receiving in February 2022 and sentenced to one year in prison. This provides some context to his assertion that he has been in custody since February 2022, he would have been serving a sentence for the majority of that time.

12. The Respondent asserted in their affidavit that there was an outstanding warrant from Magistrate Court #10 for the applicant's failure to

appear in court. Counsel for the applicant makes the point that if in fact a warrant had been issued, it must have either been executed by now, or cancelled, since the antecedents of the applicant only mentions one Court #10 matter, the stealing conviction in 2018. The assertion of the existence of the warrant however has not been factually contested and it does point to non-compliance with the orders of the Court, a factor to consider in determining whether the applicant would appear to take his trial.

13. The applicant therefore appears before the court as a person who has previous convictions, one of which he has served a sentence of one year in prison for. He for the purposes of the law, therefore cannot assert that he is of good character, for the purposes of that consideration in a bail application. The issuance of a warrant provides some evidence of his disposition in respect of his likelihood of surrendering into custody or appearing to take his trial.

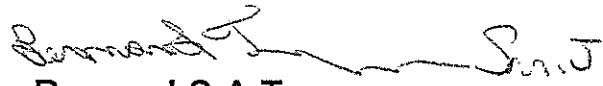
14. I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would not appear to take his trial.

15. I have considered whether any conditions could be imposed which would prevent the applicant from failing to appear to take his trial. I do not consider that there are any such conditions which could be deployed to ensure his attendance.

16. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody.

17. His application for bail is therefore refused.

Dated this 16th day of May, A D 2023

A handwritten signature in black ink, appearing to read "Bernard S A Turner S.J.", written in a cursive style.

Bernard S A Turner

Senior Justice