

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Side
2018/CRI/bal/No. 00326

BETWEEN

LIVINGSTON KNOWLES

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

APPEARANCES: Mr Ian Cargill for the Applicant
Ms Abigail Farrington for the Respondent

HEARING DATE: 7 & 14 November 2022

RULING

1. This application for bail is made by summons supported by an affidavit filed on 28 October 2022. The applicant is charged with:
 - a. Attempted murder, contrary to section 292 of the Penal Code,
 - b. Possession of a firearm with intent to endanger life, contrary to section 33 of the Firearms Act,
 - c. Murder, contrary to section 291(1)B of the Penal Code,
 - d. Possession of an unlicensed firearm contrary to section 5b of the Firearms Act, and
 - e. Possession of ammunition contrary to section 9(2)(A) of the Firearms Act.

Charges (a) and (b) above are alleged to have been committed on 9 January 2022 and charges (c) to (e) are alleged to have been committed on 7 April 2022, in other words, there are two distinct and separate sets of charges.

2. The applicant had applied for bail in July 2022 and that application was denied on 8 August 2022.
3. In so far as the Court is aware, the applicant did not challenge that previous decision, instead he launched this application; as is his undoubted right: see The Bahamas Court of Appeal decision in **Richard Hepurn Jr. v Attorney-General (No. 2)** No. 135 of 2016, where it was stated:

“Every application for bail pending trial should be considered afresh. A judge considering the application should cast his mind to the usual considerations.... The judge must “... have regard to the previous finding on the application for bail, consider whether there is

any new material relevant to the question of bail; and also consider whether there were existing circumstances at the time of the previous application which were not brought to the court's attention and [are] relevant to the grant of bail."

4. Since as the decision indicates, the judge must have regard to the previous finding and consider whether any new material relevant to the question of bail is available, I considered the fresh affidavit filed in the extant application.
5. That affidavit, filed 28 October 2022, is exactly the same as the affidavit filed in the previous application, on 14 July 2022, except for updated information in paragraph four as to adjourned dates in the Magistrates Court, and fresh indications as to where he would reside, if released on bail, and some contradictory information as to his employment prior to being remanded into custody (in the July affidavit, he had asserted that he was employed at a water tour company, in the October affidavit, he asserted that he had been self-employed).
6. No new material relevant to the question of bail has been placed before the court, nor were any existing circumstances at the time of the previous application which were not brought to the court's attention and are relevant to the grant of bail been brought to my attention on this application.
7. The Respondent continued their opposition from the previous application and filed an affidavit on 7 November 2022 which exhibited

in support of their objection the affidavit in response filed on 2 August 2022 in relation to the previous application.

8. The Bail Act, section 4 provides:

“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),

and where the court make 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 for the released 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.”

9. Part A of the First Schedule of the Act provides as follows:

In considering whether to grant bail to a defendant, the court shall have regard to the following factors:-

- (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;...**
 - (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant;**
 - (h) in the case of violence allegedly committed upon another by the defendant, the court’s paramount consideration is the need to protect the alleged victim.”**

10. All of these factors were taken into consideration in the applicant’s last bail application. The reasons given by the court as to why the applicant should not be released on bail in August 2022 continue to have the same weight now as when given then.

11. I had stated that the test for bail is that there must exist sufficiently probable grounds that the applicant would abscond the

jurisdiction of the court or otherwise not appear for his trial. In those circumstances, detention would then be necessary to ensure his appearance (**Attorney General v. Bradley Ferguson et al** SCCrApp No. 57, 106, 108, 116 of 2008).

12. I had also stated the following:

“9. With respect to the applicant’s criminal history, the antecedent form dated 21 July 2022 and marked exhibit “D.P.7” informs that he has previous convictions for robbery, deceit of a public officer, possession of ammunition, and violation of bail conditions (24 counts).

10. The applicant also has pending charges for housebreaking and stealing, for which he had been released on bail in December 2020.”

13. Both of the applicant’s affidavits state, at paragraph 8 in each affidavit, that: **“I do have a pending matter before the Court in the Commonwealth of The Bahamas. I was on bail for Murder and Attempted Murder, both happened in 2020.”** This admission of other pending charges is not repeated by the prosecution nor is there any indication of a bail bond in respect of any such charges of murder or attempted murder. I do not consider therefore that the Applicant has any such charges, it does not of course help when erroneous information is placed before the court.

14. I am required to consider the strength of the apparent evidence against the applicant in the instant matter. The respondent's previous affidavit opposing the application for the grant of bail exhibited the applicant's charge sheet, a statement of an anonymous witness to the alleged murder, together with a photo line-up used to identify the applicant, in addition to a statement of witness who rented a vehicle to a person identified as the applicant, that vehicle is also alleged to have been used in the commission of the offence.
15. Based on the information provided to the court, it cannot be said that the intended evidence against the applicant in respect of the murder allegation is non-existent or weak, indeed it could be said to be cogent and compelling. No information or intended evidence was provided in respect of the attempted murder allegation.
16. The applicant has pending charges for the offences of housebreaking and stealing. He has previous convictions for robbery, deceit of a public officer, possession of ammunition and violation of bail conditions.
17. Relative to the issue of an incentive to abscond, nothing was presented to demonstrate that the applicant has a propensity to do so. The antecedent form however notes convictions (at the same time) for 24 counts of violations of bail conditions. This raises concerns regarding the applicant's ability to adhere to conditions set by the bail bond, and given his antecedents, whether he is likely to appear for his trial.

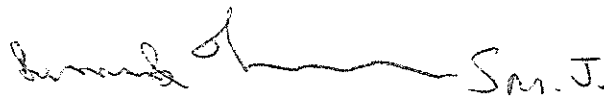
18. As a result of these concerns, I will consider whether such risks can be eliminated or minimized with the imposition of appropriate conditions.
19. From the applicant's previous bail bond, conditions included:
- a) reporting to the police station every Monday and Friday before 6:00 pm,
 - b) daily curfew between the hours of 9:00 pm to 6:00 am,
 - c) electronic monitoring,
 - d) an order to refrain from interfering with witnesses, and
 - e) an order that the breach of any such conditions would render the applicant liable to further remand.
20. Despite these conditions, the applicant has demonstrated an inability to abide by them and in these circumstances, I find that an electronic monitoring device, nor sureties, nor reporting conditions, nor curfews have been effective in ensuring his compliance with bail conditions, nor would they be effective in preventing the applicant from interfering with witnesses or absconding and not appearing to take his trial or in committing other offences.
21. I do not believe that any other conditions can be imposed to mitigate such risks as most of the usual conditions have already been imposed and have been frequently breached.

22. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody to await his trial dates, on the charges.

23. His application for bail is therefore refused.

24. The applicant is at liberty to appeal this ruling to the Court of Appeal should he disagree with its findings.

Dated this 23rd day of November, A. D., 2022.

A handwritten signature in black ink, appearing to read 'Bernard S A Turner', followed by the initials 'Snr. J.' written in a cursive style.

Bernard S A Turner

Senior Justice