

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Criminal Side**  
**2022/CR/bal/No. 00195**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

**And**

**MIKEY MILLER**

**Respondent**

**BEFORE:**           **The Honourable Mr. Senior Justice Bernard  
Turner**

**APPEARANCES:**   **Mr Roger Thompson, Ms Cordell Frazier and Ms  
Jameica Basden for the Applicant**

**Mr Sidney Dorsette for the Respondent**

**HEARING DATES:**   **28 November & 20 December 2022, 16 January  
and 10 February 2023.**

## **RULING**

**TURNER Snr. J.**

The applicant in this matter, the Director of Public Prosecutions, is seeking revocation of the bail granted to the Respondent Mikey Miller on 5 September 2022 for a charge of Assault with a Deadly Weapon.

2. The conditions of the bond signed by the Respondent and his suretor are laid out in the affidavit in support of the revocation application. That affidavit reads:

**“..2. That this Affidavit is made in support of an application for the revocation of the Respondent's bail. A copy of the Bail Bond is attached and marked as "Exhibit G.T-1.**

**3. That the Respondent suretor is Shantelle M. Taylor of #23 Lucky Heart Corner, East Street.**

**4. That the Respondent was granted bail by the Honourable Supreme Court Justice Bernard Turner on 5<sup>th</sup> September 2022, in the amount of Four Thousand Dollars (\$4,000) with one (1) suretor or two (2) sureties. Attached hereto marked as "Exhibit G.T.-1" is a copy of the Bail Bond outlining the terms of the Bail. That the conditions of the Respondent's bail were as follows:**

**a. Report to the Nassau Street Police Station, every Monday and Friday before 6:00 pm.**

**b. Respondent is to be fitted with an electronic monitoring device and must agree to be bound by the Regulations of the device.**

**c. That the Respondent is subject to a curfew at his residence between the hours of 8:00pm and 6:00am daily; and**

**d. Respondent shall have no contact with prosecution witnesses.**

**5. That the Respondent MIKEY MILLER (D.O.B. 17/04/1997) is charged with**

**a. Assault with Dangerous Instrument.**

**6. That the Respondent signed the Bail Bonds agreeing to comply with all the conditions listed on his Bail Bond.**

**7. That the Applicant was informed by Metro Security Solutions that the Respondent was non-compliant with the conditions of the Electronic Monitoring Program between the period of 8<sup>th</sup> October 2022 to 17<sup>th</sup> October 2022. Attached hereto marked as Exhibit "G.T.-2" is a copy of the Electronic Monitoring Compliance Report. The Electronic Monitoring Compliance Report noted the following:**

**a. Reported that sometime around 10:30pm on 4<sup>th</sup> October 2022 the Monitoring Center received an alert via Global Positioning System for the Respondent in violation of his curfew conditions as imposed by the court, whereby, his battery was on zero percent (0%) and at this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.**

**b. Reported that sometime around 1:11 pm on 8<sup>th</sup> October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court, whereby, his battery was on zero percent (0%) and at this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.**

**c. Reported that sometime around 8:36 pm on 10<sup>th</sup> October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court, whereby, his battery was on zero percent (0%) and at this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.**

**d. Reported that sometime around 8:14 am on 13<sup>th</sup> October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court, whereby, his battery was on zero percent (0%) and at this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.**

**e. Reported that sometime around 2:08 am on 17<sup>th</sup> October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court, whereby, his battery was on zero percent**

**(0%) and at this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.**

**8. That if the Respondent remains on Bail, he will continue to breach his bail conditions.**

**9. That the Applicant has filed this Affidavit for the revocation of bail of the Respondent for failing to comply with the conditions of the Electronic Monitoring Device Program.**

**10. That the Respondent for the above reasons is not a fit and proper candidate to be on bail and in the circumstances bail should be revoked.**

**11. That the contents of this Affidavit are true to the best of my knowledge, information, and belief.”**

3. The Respondent filed two affidavits in response to the application, neither of which were by him, but instead were by his parents, in which issue is taken with some of the contents of the affidavit in support of the application. The affidavit of his father reads as follows:

**“1. The Respondent is my son. I depose as mentioned with his authorization and personal knowledge. He was granted bail, of \$4,000.00 by the Honourable Supreme Court, on 5 September 2022, his sister Shantelle Taylor standing surety. I humbly beg that the Summons for revocation be dismissed.**

2. Evidently the device provided the Respondent was malfunctioning. I took the Respondent to Wulff Road Police Station on three or four occasions specifically to charge the electronic monitoring device wherewith the Respondent was outfitted.

3. Owing to the malfunction I took the Respondent to the Police Station on Nassau and South Streets corners. The officers were unable to assist. They recommended we visit Wulff Road Police Station; and that is what we did.

4. I took the Respondent to Wulff Road Police Station three or four times to charge the ankle bracelet he was outfitted with until his mother, Margo Miller, bought a new charger from Metro Security Solutions. I have the old one. Evidently the fact of the malfunctioning charger is omitted from the supportive Affidavit for the application. I make this Affidavit as I am aware that Wulff Road Police Station cannot provide confirmation of the foregoing until next week.

5. The contents hereof are correct and true.”

4. The affidavit of his mother reads:

“1. That the Respondent is my son, is now at the Department of Correctional Services for allegedly breaching bail conditions, and he has authorized me to depose as herein mentioned regarding my knowledge of the malfunctioning charging device he received.

2. That an Affidavit by his father, Michael Lunn, states that the Respondent charged his ankle monitor at Wulff Road Police Station. That is correct. His father (who is presently ill) would collect him from my residence and take him to Wulff Road Police Station to recharge it. When his father was unavailable, I took the Respondent, until I purchased a new charger from Metro Security Solutions. A copy of my receipt is now produced and shown annexed hereto marked "A."

3. That I honestly believe this application arises because a defective charger was given the Respondent. It is available for inspection. The applicant has not explained how a malfunctioning charger was given the Respondent, will not clarify anything expected in the circumstances, including why this application was initially pursued on grounds of curfew breaking, or why it is being pursued at all if the virtual complainant desires to withdraw the charges, and if the mistake in the Affidavit stems from carelessness.

4. That the Affidavit by Corporal 3674 Gregory Taylor is troubling due to what it conceals. The claim that the Respondent willfully refused to charge the monitor is incorrect, the Respondent is detained as his bail on the new charge could not be met; and I am advised by counsel and honestly believe that it is a misdemeanor to prepare a false Affidavit as occurred herein.

5. That Counsel informs that while the applicant no longer asserts a curfew existed that the applicant now proceeds on the alleged

**breach being failure to recharge the monitor only. I humbly beg that the Court should deny the application because information on the defective charger was concealed although the negligence in issuing a defective device was an easily verifiable fact.**

**6. That according to Counsel for the Respondent, Wulff Road Police Station did not respond to his letters requesting confirmation of the Respondent using their charger. Copies of the letters are shown annexed in a bundle marked "B."**

**7. That the contents hereof are correct and true."**

5. Section 12(3) of the Bail Act states that:

**"12(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer where**

**—**

**(a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;**

**(b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;**

**(c) the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his**



**bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or**

...”

6. In relation to the application, it falls within the scope of section 12(3)(c), as the applicant is asserting that the respondent has failed to comply with certain of the conditions of his bail, in as much as the conditions imposed electronic monitoring on the respondent, with the concomitant requirement to comply with the regulations for the use of those devices.

7. The attached reports from the monitoring authority detail that on the 4<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> 13<sup>th</sup> and 17<sup>th</sup> October 2022, the respondent’s monitoring device, which the regulations, via the agreement signed between the respondent and the monitoring authority, was required to be charged once per day for a period of two hours, with a portable charging device which allows the person to move about even as the device is being recharged, was “off the grid” for hours, a term which means that the rechargeable battery for the device had been allowed to discharge to zero, in breach of the agreement.

8. Effectively, when a person being monitored, per a court order, allows his device battery to discharge to zero, he can no longer be monitored. The authorities therefore would not know whether such a person is commencing an attempt at fleeing the jurisdiction of the court, or whether they are otherwise in breach of some other condition of the court.

9. Most fundamentally however, that failure to charge the device means that the person placed on bail by a court is in breach of the order of the court.

10. As noted in the affidavit's, the respondent's reply to the allegation of being in breach of his conditions was to attack some of the content of the affidavit; by asserting that the respondent did in fact comply with the conditions but that he was hampered by a defective charger.

11. Further, the respondent asserted that whereas the applicant alleged a breach of a curfew, that in fact a curfew was no part of any of the conditions imposed on the respondent.

12. The respondent also asserted that the affidavit contained hearsay information which should have come directly from the monitoring authority.

13. In relation to the issue of hearsay, that submission missed two important points, the first being that in bail applications, some amount of hearsay is permissible, as per the statement of the Court of Appeal in **Attorney General vs. Bradley Ferguson et al, Nos. 57, 106, 108, 116 of 2008.**

14. Secondly, and more importantly, the information is in fact before the court, in exactly the same way the intended evidence in a matter is placed before the court on a bail application, to determine whether there is any cogency to the evidence, by way of the statements, or in this case, the reports, being attached to the affidavit of the applicant.

15. In relation to the curfew issue, I agree with the submission that there was no curfew imposed on the respondent.

16. The allegations by the applicant however go further than an assertion that non-existent curfew conditions were breached, they go on to allege that

the respondent, willfully allowed the battery to discharge, in breach of the terms of the agreement which the respondent was obliged to comply with.

17. In relation to this allegation, the respondent contends that he was compliant but that the EMD charger was not working. This assertion is controverted by a further affidavit of the applicant, dated 16<sup>th</sup> January 2023, in which the affiant, Corporal 3674 Gregory Taylor stated that:

**“5. That the respondent was dishonest when he stated that his device malfunctioning. That on the 31<sup>st</sup> October 2022, the Respondent was at CID, and in my presence, his charger was inspected and found to be in working order by C. McQuay and A. Rahming, personnel c/o Metro. When questioned to the fact that he did not have a charging dock, the Respondent stated that his charging dock was left at his residence when he was remanded to the Bahamas Department of Correctional Services and upon his release he could not find it. As a result, the Respondent was made to purchase a charging dock for his negligence. ..**

**7. That the Respondent never reported that he misplaced his charging dock until he was in breach of his bail and his subsequent detainment for his breach.”**

18. This affidavit was followed by a further affidavit for the respondent, for the first time by the actual respondent, denying the contents of the affidavit of Corp Taylor, and a further affidavit by Corp Taylor, denying the assertions of the respondent.


19. On the available evidence I find that the Applicant, the Director of Public Prosecutions, has established that the Respondent has repeatedly

breached the conditions of his bail. I do not accept the affidavit evidence of the respondent as to the factual circumstances surrounding his device having run down to zero percent charge on the occasions as outlined above.

20. In these circumstances I find that no conditions can be imposed upon the Respondent, if he were returned to bail, which would ensure that he appears before the court to take his trial in The Bahamas, and/or not offend. I note, although it does not feature in this application, that the respondent has in any event been charged with some offence for which he has not yet been able to meet the terms of his bail granted to him.

21. For these reasons, in relation to the present application, the bail granted to the Respondent on the charge of assault with a dangerous instrument is hereby revoked and he is remanded to await his trial. The applicant, of course, may reapply for bail.

**Dated this 21<sup>st</sup> day of February, A D 2023**

A handwritten signature in black ink, appearing to read "Bernard S A Turner S.M.J.", written over the printed name.

**Bernard S A Turner  
Senior Justice**