COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2020/CRI/bal/No. 00228

BETWEEN

TARRICO BOWLEG

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard
                Turner

APPEARANCES: Mr Ian Cargill the Applicant
                Ms Cordell Frazier for the Respondent

HEARING DATES: 25 & 31 October, 7 & 28 November 2022

RULING

TURNER SNR J

The applicant herein is applying for bail by way of a summons filed 5 October 2022 in respect of a charge of a count of armed robbery, which is alleged to have occurred on 12 September 2022.

2.   His affidavit in support of the application for bail, reads, in part:

> " .....
>
> **2. I was born on the 23rd day of April. 1998, in the Commonwealth of the Bahamas and I am 24 years of age.**
>
> .....
>
> **4. I was arraigned in Magistrate Court No. 4 on the 28th day of September, A.D., 2022 before Magistrate Mr. Shaka Serville.**
>
> **5. I pleaded Not Guilty and will be defending these charges at trial.**
>
> **6. That I respectfully request that this Honourable Court admit me to bail pending my further Court Appearances**
>
> **7. I do have previous conviction before the Court in the Commonwealth of The Bahamas.**
>
> **8. I do have a pending matter before the Court in the Commonwealth of The Bahamas.**
>
> ...."

3.   The Respondent filed an affidavit on 20 October 2022 which provided some information about the nature and strength of the evidence in the present matter, as well as in respect of his previous convictions and his pending matter.

4.   From that affidavit, in respect of the allegation of armed robbery, the incident is alleged to have taken place at a restaurant supply store on Mackey Street and involved the alleged theft of over eighteen thousand dollars. The applicant was identified on a photo lineup, having declined to attend an identification parade.

5.   In relation to previous convictions, the affidavit of the respondent attached an antecedent form indicating convictions for:

    i.   Escape (sentenced to time served on 24 September 2014),

    ii.   Housebreaking and stealing (sentenced to 18 months on each count to run concurrently on 26 August 2015),

    iii.   Possession of dangerous drugs with intent to supply (sentenced to 1 year with effect from 9 February 2016), and

    iv.   Possession of dangerous drugs (sentenced to time served on 12 April 2016).

all in the Magistrates Courts.

6.   The respondent, in their affidavit opposing bail stated:

"10. That whiles on bail for the alleged Murder matter, the Applicant was subsequently charged with the present Armed Robbery offence and hence, the Respondent has substantial grounds for believing that the Applicant has the propensity to commit the same and/or similar offences should he be released on bail

11. Further, the Applicant should be kept in custody in the interest of public safety and public order

12. That the evidence against the Applicant in respect to the present offence is cogent. The eyewitness, *(name redacted by court)* who was present at the Restaurant Supplies store #2 at the time of the robbery identifies the Applicant in a 12 man photo line-up conducted by D/Sgt 3216 Patton on the 23rd September, 2022 in position #10 as the male that grabbed him from behind and pointed the handgun in his face wearing the blue hooded sweater, ripped jeans and black tennis. There is now produced and shown to me marked as "Exhibit TB-4", Exhibit TB-5" and Exhibit TB-6" a copy of the Statement of *(name redacted by court)* dated the 23rd September, 2022, the Report of D/Sgt 3216 Patton and the 12 man photo line-up respectively.

13. That the Applicant, when asked by D/Insp. Donna Barr to participate in an identification parade or group identification he refused to do so refused and the same was documented on an Identification parade Form. There is now produced and shown to me marked as Exhibit "TB-7, "Exhibit TB-8 a copy of the Report of D/Insp. Donna Barr and the Identification Parade Form respectively.

14. That the Applicant is not of good character and having regard to the serious nature of the offence to which he is presently charged with and the severity of the penalty if convicted, is sufficient incentive for the Applicant to abscond or fail to appear at his trial should he be released on bail.

15. That the Applicant has a previous conviction for escaping lawful custody which further strengthens the Respondent's belief

that if released on bail he will fail to appear for trial in respect of the present Armed Robbery and pending Murder matter.

…."

7. The issues to be considered in an application for bail are found in the Bail Act and several decisions of the Court of Appeal of the Bahamas. Section 4(2) of the 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),....."

8. 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."

9. Counsel for the respondent submitted both that the evidence against the applicant was cogent and that having regard to the antecedents of the applicant, that their beliefs as adumbrated in their affidavit are all reasonable and supported by the evidence of his character and the attendant circumstances.

10. In **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, the Court of Appeal stated:

> **"66. In the absence of evidence, merely listing the relevant factors and using expressions such as "may"; or "is likely to"; or "it is recommended" as was done in the McHardy affidavit, cannot discharge the Crown's burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown's burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail "would", if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.**
>
> ...
>
> **70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant's good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable**

of supporting the judge's ultimate conclusion at paragraph 16(v) of his decision that: "in the circumstances of this Applicant and this application the need for public order and public safety is paramount". In the absence of evidence that the appellant posed a substantial threat to the Crown's witnesses or to public safety and public order, the judge's decision was unreasonable and clearly wrong."

11.   A bail application is not to determine whether a person is guilty of any offence, but to determine whether an applicant ought to be placed on bail, or whether there is any sufficient basis made out to determine that he should be remanded into custody to await his trial.

12.   Having regard to the issues raised by the legislation in section 4(2B), I note that the applicant, despite his young age, already has a criminal record of matters, while not approaching the seriousness of allegations of murder or armed robbery, nevertheless are convictions for serious matters, inclusive of housebreaking, stealing, and possession of dangerous drugs with intent to supply.

13.   Further, the applicant also has an escape conviction, and whereas speculation about future conduct is exactly that, I find that in the circumstances of this matter, it is sufficient evidence of prior conduct to give the court concern about future conduct, as to whether he would appear to take his trial.

14.   In addition, at the time that the applicant was charged with this matter, he was on bail for a pending charge of murder, for which he was being electronically monitored.

15. Counsel for the applicant submitted that this device would be able to prove that the applicant was not in the vicinity of the alleged scene of the armed robbery and requested information from the monitoring authority as to the movements of the applicant. As a result of that request, I ordered that the authority produce information about the movements of the applicant.

16. That information came in the form of viva voce evidence from a member of the staff of the authority, who confirmed that at the time of the alleged robbery, that the global positioning system (GPS) of the authority was not operative and that this outage covered a period of approximately 45 minutes before the time of the alleged robbery until approximately 15 minutes after that time.

17. In response to this submission, counsel for the applicant submitted that the applicant could not have known that the GPS was not operative, and therefore the fact that he made the request for the information is some indication of the earnestness of his application.

18. The respondent's submission on the issue is that there is simply no information, one way or the other, for the court to factor in the decision making process on a bail application.

19. On this issue, what the court does note is that the applicant is purportedly identified as one of several men who allegedly robbed a store which just happened to be less than a half mile away from the location where the GPS placed the applicant at 1:44pm, when it resumed monitoring, while the intended evidence suggested that the robbery took place around 1:30pm. Like other evidential issues, this issue is largely for a trial court.

20.   All that a court in a bail application is required to consider is whether there is any information which suggests that the potential evidence in the matter, if accepted, is cogent.

21.   In relation to that issue, I concur with the submission that the evidence, if accepted, could be considered cogent, consisting as it does of identification evidence by way of a photographic lineup.
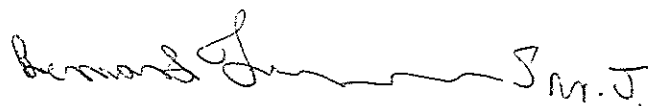
22.   I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would not only interfere with the witnesses in this matter, and endanger public safety generally, but that he would also not appear to take his trial.

23.   Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and the applicant not appearing at his trial, I do not consider that any conditions could be placed on the Applicant which would prevent any of those eventualities. Electronic monitoring devices are useful and effective tools for tracking persons on bail, that Applicant however was being electronically monitored when this offence was alleged to have taken place. There is nothing which physically prevents a person from removing the device, once a decision is made to breach the conditions of a bond.

24.   In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody in relation to this latest charge of armed robbery.

25. His application for bail is therefore refused.

26. The applicant is at liberty to appeal this decision.

Dated this 2nd day of December, A D 2022

Bernard S A Turner
Senior Justice