

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAL/112/2023

BETWEEN

FRANKLYN WHYMNS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Jeanine Weech-Gomez

Appearances: Ms. Miranda Adderley for the Applicant.
Ms. Xandrell Bain for the Respondent.

RULING- BAIL

Weech-Gomez J

FACTS & SUBMISSIONS

1. The Applicant in this matter, Franklyn Whymns (D.O.B. 5th October, 1997) (the “**Applicant**”) is charged in case **#123054271** with one (1) count of Armed Robbery, contrary to section 339(2) of the Penal Code, Chapter 84; two (2) counts of Possession of Firearm with Intent to Endanger Life, contrary to section 33(a), one (1) count Possession of an unlicensed firearm contrary to section 5(B) and Possession of Ammunition, contrary to section 9(2)(A), all of the Firearms Act, Chapter 213. In case **#123051484** he is charged with one (1) count of Armed Robbery, contrary to section 339(2) of the Penal Code, Chapter 84 and in case **#123054272** charged with two (2) counts of Armed Robbery, contrary to section 339(2) of the Penal Code, Chapter 84 and one (1) count Possession of Firearm with Intent to Endanger Life, contrary to section 33(a) of the Firearms Act, Chapter 213.
2. The Applicant made application for Bail via Summons and Affidavit filed the 29th June, 2023 and the Respondent replied thereto via its Affidavit of Response filed the 12th July, 2023.
3. As it relates to Submissions, the applicant via his Affidavit stated that he is currently on remand for 3 counts of Armed Robbery , resides on Seabreeze lane, has previous convictions for possession of dangerous drugs, but no other convictions or pending matters, he is innocent of all charges brought against him, will be present for any and all court hearings, is not a flight risk, has a medical condition that requires medication and a strict diet, will not interfere with witnesses, will abide by all Bail conditions, has strong ties to his family and community, prior to his remand he was employed as a painter with indoor and outdoor artists with the ability to return to work if granted Bail. He will not abscond and ultimately is a good candidate for Bail.
4. On oral submissions, the Applicant’s Counsel asserted that the 2018 convictions concerning the Applicant were non-violent and some five years ago. He has been in no problems since then and is still a very young man. She further stated that he will abide by all bail conditions and has yet to receive his trial date in this

matter. Counsel concluded by asking for a reasonable amount if Bail is to be considered.

5. The Respondent via its Affidavit has stated at that outset that where the Applicant states to having only three (3) counts of armed robbery charges, these are separate matters and have other counts attached to them and not one single matter as may be suggested. The evidence in this matter is cogent, particularly where positively identified by the virtual complainants (VC's) in each of the matters. The Applicant has previous convictions for possession of dangerous drugs with intent to supply, the Applicant is a threat to public safety by virtue of his antecedents and armed robbery charges, due to the severity of the penalty if convicted there is great concern that there is sufficient incentive for the Applicant to abscond and as such is a potential flight risk.
6. On oral submissions, the Respondent provided that the First Schedule Part A of the Bail Act speaks to the importance of cogent evidence and in this instance , the Applicant has been positively identified by three (3) different VC's. Also considered is the character of the Applicant and the seriousness of the offences with which he is charged along with the threat to public safety particularly where gun violence is on the rise.
7. In reply, Counsel for the Applicant made the Court aware that there has yet to be a VBI served in this matter and rely on ***Jevon Seymour v DPP SCCrApp No. 115 of 2019 and Dennis Mather v DPP SCCrApp No. 96 of 2020*** where the primary importance was whether the Applicant would interfere with witnesses and fail to appear for his trial and not to argue the facts of the case. The Respondent in reply with leave relies on ***Jonathan Armbrister v AG SCCrApp No. 145 of 2011 and Cordero McDonald v AG SCCrApp No. 195 of 2016***, where the focus was one moved away from simply ensuring the Applicant will appear to also considering whether the evidence raises a reasonable suspicion.

THE LAW & DISCUSSION

8. Through the Constitution of The Bahamas, there is a presumption of innocence given to all citizens and for this reason the opportunity to apply for Bail, though not automatically granted. The Bail Act (as amended) provides guidelines to assist

Judicial officers in their discretion to grant or deny bail. The relevant factors concerning this matter will be taken in turn and the Court's decision thereafter.

9. The first consideration is whether the matter is being **tried in a reasonable time**, with 3 years from being charged considered too lengthy. In this matter, the events allegedly having occurred in May of this year is moving in the normal trajectory of such matters and does not pose an issue at this time.

10. The second consideration is the **character or antecedents** of the Applicant. The Applicant's antecedents reflect three convictions for possession of dangerous drugs with intent to supply, while a Part B offence, the Act asks us to consider the criminal history of the Applicant if any. Also considered is the **need to protect the safety of the public or public order**. From the evidence that has been provided by the Crown which will be expounded upon in a later section, we have four virtual complainants (VC's) allegedly being robbed of personal items including cars and a cell phone and positively identifying the Applicant and the Applicant concerned with others being found in possession of an unlicensed firearm and twenty-two (22) rounds of ammunition. These were all unconnected matters where civilians were placed in unsuspected harm that had the potential to be fatal and for this reason public safety must be considered.

11. The final consideration for this Court is **the nature and seriousness of the offence and the nature and strength of the evidence**. As has been intimated above, armed robbery, a Part C offence is very serious because the results of same can be fatal amongst the other residual effects it can have on its victims. In this matter we are presented with four (4) separate incidences of armed robberies said to have been carried out by the Applicant and others. As it relates to the nature and strength of the evidence, we are presented with witness statements by three of the VC's in this matter who all positively identify the armed robber as the Applicant in this matter and some witnesses also indicating that they had him in view for more than 15 seconds and that he approached their car window without wearing a mask and another stated that he stood about two (2) feet away with nothing obstructing her view and that the lighting condition was bright as they

parked under a street light. Also deduced was the Applicant and others being unlawfully found with an unlicensed firearm and twenty-two (22) rounds of ammunition.

12. While this Court does not seek to enter into an *“impermissible degree into the evidence” (Dentawn Grant v DPP SCCrApp No. 59 of 2022)* there is concern for the amount of victims of the alleged robberies and the amount of illegal ammunition found. The Respondent has provided evidence that *“raises a reasonable suspicion” (Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016)* of the commission of the offences and cannot be said to be uncircumstantial.

Conclusion

13. Understanding this, this Court having taken into account the cogent evidence adduced, the antecedents of the Applicant and concerns for public safety amongst others alongside the conditions that could be set, the Court is not minded to grant the Applicant bail at this time.

14. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 26th day of July, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez