

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00169/2023

BETWEEN

LATARIO WHYMS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Ian Cargill for the Applicant.
Mr. Uel Johnson for the Respondent.

RULING- BAIL

INTRODUCTION

1. Latario Whyms (D.O.B. 10-Oct-2002), the Applicant, has been charged with one (1) count of Armed Robbery contrary to section 339 (2) of the Penal Code, Chapter 84, one (1) count of Receiving contrary to section 358 of the Penal Code, Chapter 84, one (1) count of Possession of an unlicensed firearm contrary to section 5(B) of the Firearms Act , Chapter 213 and one (1) count Possession of Ammunition contrary to section 9(2)A of the Firearms Act, Chapter 213, with respect to events of the 17th and 23rd April, 2023 respectively on the Virtual Complainant , William Paul (“**VC**”). He applied for Bail via Summons supported by an Affidavit both filed on the 15th September, 2023. The Respondent filed its Affidavit in Reply on the 21st September, 2023.

SUBMISSIONS

2. The Applicant relied on his Affidavit and asked the Court to note that the Respondent’s Affidavit is not based on the factors that the Court should have regard to particularly factor “g” of the Bail Act. Counsel for the Applicant continued that based on the standards required there has not been evidence put forth that the Applicant is a flight risk nor any inferences drawn to suggest the same. Further he has ties to the community as a Bahamian citizen and has never lived in any other jurisdiction. Additionally, prior to these charges he was gainfully employed. He is not a man of significant means to allow for flight. He also has no previous convictions and is a man of good character.
3. Counsel continued that there is no evidence that the Applicant will commit further offences while on Bail and that his pending matter does not show a propensity to reoffend and asked the Court to look to paragraph 19 of the case of **Dennis Mather** in response to the Respondent’s Affidavit. Counsel concluded his submissions by asserting that there has also not been any evidence to suggest nor support that the Applicant will interfere witnesses and in all circumstances, the Applicant is a fit and proper candidate for Bail.
4. Counsel for the Respondent submitted that it also relied principally on its Affidavit and drew the Court’s attention to paragraphs 9, 13, and 14 that highlight that the Applicant was positively identified by the VC, that the Applicant admitted to the offences in his record of interview and that the Applicant has a propensity to commit such crimes as seen by the elevation from Conspiracy to Commit Armed Robbery to Armed Robbery.
5. Counsel continued that they rely on section 4(2) (b) of the Bail Act as it relates to character and antecedents and also section 4(3). Counsel rounded submissions by referencing that the case of **Dennis Mather (supra)** also highlights the cogency of the matter.

Law & Discussion

6. The presumption of innocence is a right granted by The Bahamas' Constitution to all citizens and for this reason an opportunity to apply for Bail. However, the granting of Bail is not automatic. The **Bail Act** (as amended), particularly sections 4(2), 4(2A), 4(2B) and the First Schedule of the Act provide guidelines with which to assist Judicial officers in their discretionary powers when hearing Bail applications. In this instant case, the most relevant of those factors will be considered in turn and a conclusion thereafter on this Court's decision.
7. Section 4(2) of the Act asks Courts to determine if the **Applicant will receive a trial in a reasonable amount time**, that being three (3) years and earlier since being charged. This matter having occurred in April of this year is within the confines of this requirement.
8. Section 4(2B) asks for a review of the **character or antecedents of the person charged and the need to protect the safety of the public and public order and where appropriate the need to protect the safety of the victim(s)**. This Applicant's antecedents reflect several pending matters inclusive of this matter with which he seeks bail and it has been shared by both sides that his pending matter is that of conspiracy to commit armed robbery in 2020, a Part C offence and one with which he was granted bail. This point will be further discussed below. However, it is no doubt that offences with the use of a firearm are undoubtedly a concern for public safety, particularly when looking at the facts of this matter which include selling electronics to the public on social media platforms such as Facebook and this Court aligns itself with the views in **Jevon Seymour v DPP SCCrApp No 115 of 2019** at paragraph 68,

"If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences;"
(emphasis added)

9. As we move to the First Schedule of the Act the next relevant consideration for this Court is **whether there are substantial grounds for believing that the defendant, if released on Bail, would (ii) commit an offence while on Bail and (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year**. It is always the hope of the Court that as Bail is granted to Applicants they do all they can to ensure that they do not find themselves before the Courts prior to their trial for any ill purpose but when that does happen, as the Act has considered there is a lesser likelihood for bail being granted again and this Court in this instance

must consider this point. The Applicant was on Bail for the charge of conspiracy to commit armed robbery when charged with this offence and when coupled with the evidence that has been presented makes it very difficult for a Court to move in the affirmative.

10. The final relevant factor of consideration in this matter is section (g) of the First Schedule which asks the Court to review the **nature and seriousness of the offence and the nature and strength of the evidence against the Defendant**. First Schedule (Section 3) Part C of the Act provides a detailed list of the crimes that are deemed to be the most serious and listed is that of armed robbery and in this matter particularly is the use of a firearm, which unfortunately has seen an uptick in our communities and wreaking havoc on public safety and this was also highlighted in ***Jonathan Armbrister v AG SCCrApp No.145 of 2011*** which states that the

“seriousness of the offence with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not”.

11. Concluding with the **nature and strength of the evidence against the Applicant**, the Respondent's Affidavit has provided several pieces of evidence connecting this Applicant to this matter including the statement of the VC which details posting his mobile phone for sale on Facebook Marketplace and the Applicant responding with his interest and after liaising on the collection time, once arriving at the agreed spot, the VC details the Applicant being in the agreed spot along with another, upon leaving the car to allow the Applicant to examine the phone and the other speaking with the friend of the VC to purchase his phone, thereafter the VC states that the Applicant was the individual who pulled out black gun with chrome tip demanding cash, taking the phones and the car of the VC's friend. The VC is said to have positively identified the Applicant as the person who robbed him and his friend and states that because of their close proximity and not wearing any face coverings he was able to positively identify him.

12. The VC is said to also positively identify the black hand gun with silver nozzle used in the robbery and also his grey Apple iPhone cellphone by a scratch that was on the phone prior to the robbery and the home screen now having a photo of the Applicant on it whom he says was the male in the red jacket who had a gun and robbed him. The final piece of evidence reviewed by the Court as it relates to this point is that of the statement of Sgt. Percy Patton who in his report stated that once approaching the Applicant on the 23rd April, 2023 in the parking lot of "Dirties Restaurant" he identified himself as a police officer by way of warrant card, asked him to identify himself, and he gave his name as Latario Whymns, DOB 10-10-2002 of Rupert Dean Lane. He informed him of the complaint, cautioned and arrested him. A search was then conducted on the Applicant and a black Glock Taurus G3 9mm pistol with serial number erased was discovered along with fifteen (15) live rounds of ammunition in his

waist. He was further cautioned and arrested on this charge and stated that he just found the gun. Upon further searching, a silver I phone 13 pro max was also found. He was then transported to the Nassau Street police station to be booked in.

13. This Court cannot dismiss this evidence as mere “bare assertions” (**Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019, para 24**) but rather as factors that “raise a reasonable suspicion of the commission of the offenses” (**Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**) by the Applicant.

Conclusion

14. This Court without delving into “a forensic examination of the evidence” (**McDonald(supra)**), found itself in the position as highlighted in **Stephon Davis v DPP SCCrApp No. 108 of 2021**, that “[w]e walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts”, but after review of all that has been presented including the evidence , pending matters and being on Bail previously and no alibi or evidence to support otherwise by the Applicant, this Court is not minded in the circumstances to grant Bail to this Applicant at this time.

15. Consideration was also given to the conditions which the Court may impose that would minimize the risks involved with the granting of bail and avoiding such offences from repeating themselves and have found none that would suffice at this time.

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

Dated this 31st day of October, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez