

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2023/CRI/bal/00251/2023

B E T W E E N

LAWPAPITO SANDS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: Jerone Roberts for the Applicant

Basil Cumberbatch for the Respondent

Hearing Dates: 12 December 2023; 20 February 2024; 27 February 2024

RULING

WILLIAMS, J

This is an application by the Applicant, charged with **POSSESSION OF DANGEROUS DRUGS WITH INTENT TO SUPPLY, CONSPIRACY TO POSSESS DANGEROUS DRUGS WITH INTENT TO SUPPLY** and **CONSPIRACY TO EXPORT DANGEROUS DRUGS** for a variation of the conditions of bail granted him.

[1.] On 26 June 2023, the Applicant was granted bail in the amount of \$50,000 subject to the following conditions:

- 1) Until the completion of the trial, the Applicant is to report to the Alice Town Police Station, Alice Town, Bimini, Bahamas, every Wednesday and Saturday, and must so report before 6 p.m. each of those days.
- 2) The Applicant is to be fitted with an electronic monitoring device (EMD).

[2.] In seeking variation, the Applicant asks that the EMD be removed. He avers:

6. That in relation to the electronic monitor I have experienced the following issues, namely:
 - (1) While deep sea diving with the electronic monitor attached to me the monitor vibrates and this creates a safety issue for me in that I have noticed that the vibration from the electronic monitor attracts barracudas and sharks;
 - (2) The salt water caused the monitor to corrode, and as a result the monitor could not be charged. In my panic, I tried everything I could to ensure the monitor would charge. However, in those efforts I damaged the charger.
 - (3) I reported the fact of the damaged charger to those responsible for the monitor and I was advised to report to them when I next travelled to Nassau for Court. I did as I was instructed. The charger was changed but I had to pay about 355 to have the charger changed. That was hard earned money I had to divert from my family's budget.

[3.] No evidence was presented by the Applicant or the Respondent of the Respondent's stance on the grant of bail at the previous hearing. The Respondent now opposes the variation of bail sought by the Applicant and answers the Applicant's averments by its affidavit of Carmen Brown. Appended thereto is a letter addressed to Mr. Bethell of Metro Security Solutions, the monitoring agent, penned by Kyle Chapin, Director of Buddi US, LLC, Manufacturer of Smart Tag EMD:

The Buddi Smart Tag is IP68 certified and is rated the highest level of dust and waterproof protection. The Tag has been tested in water at a depth of 5 metres (16 feet) for 1 hour and stress tested to a depth of 3 atmospheres (about 60 feet) The Smart Tags have also been successfully tested by an independent lab for shock and vibration resistance.

[4.] I take judicial notice that according to the National Oceanic and Atmospheric Administration (NOAA) one atmosphere is in fact 33 feet (10.06 metres).

[5.] I take into account that the Applicant has no pending matters and no previous convictions. I note the well traversed principle that bail should not be denied to an accused as punishment prior to trial.

[6.] The Applicant is presumed innocent. To date, he has not breached any of the imposed conditions.

[7.] I note the evidence is such to raise a reasonable suspicion of the commission of the offences by the Applicant. The Applicant was the Captain of the vessel, a secured panel of behind which the drugs were alleged to have been found.

[8.] I take judicial notice of the recent increase of attempts to import into and export out of the Bahamas dangerous drugs, thwarted by the heightened vigilance of the relevant authorities.

[9.] The Applicant complains that the immersion depth of the unit is limited to 60 feet. Notwithstanding, Buddi US, LLC speaks to a depth of three atmospheres. According to the NOAA, the standard measurement of one atmosphere is 33 feet. It follows then that three atmospheres is 99 feet.

[9.] On the facts of this case, I am satisfied that the performance of the unit in question, or the failure thereof, is an anomaly.

[10.] In the premises, having heard and considered the evidence and submissions, I am satisfied that the fitting of an EMD in this case is the appropriate minimum necessary to ensure the attendance of the Applicant for his trial, and to monitor his traversing whilst awaiting that trial. The applied for variation is refused.

Dated the 5th day of April 2024


Franklyn K M Williams, KC

Justice