

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2024/CRI/bail/234/21**

BETWEEN

ASHTINO DOUGLAS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **MS. Cassie Bethel for the Applicant**
 Ms. Destiny Morley for the Respondent

Hearing Date: **11th March A.D. 2024**

Ruling Date: **25th March A.D. 2024**

RULING ON BAIL

1. The Applicant is charged with another with one count of Armed Robbery, and seeks bail. The application is supported by an affidavit filed 23rd January 2024 in which the Applicant avers that he is 23 years old, that he was employed as a construction worker, that he has no previous convictions and a pending matter for firearm possession. He maintains his innocence, and suggests that if not granted bail he will be disadvantaged in his ability to prepare his defence and assist his family.
2. In seeking to oppose the application, the Respondent proffered the affidavit of Vashti Bridgewater, to which are exhibited a number of reports. From those reports, it can be gleaned that the Applicant, while being concerned with another, is alleged to have robbed Faith Variety Store, Lobster Avenue, on 16th November 2023. The Applicant was arrested on 28th November 2023, and admitted his being the driver of a green Nissan Note form which two men emerged to commit the robbery.
3. The Respondent further notes that the Applicant has the previous convictions for Possession of Unlicensed Firearm, Possession of Ammunition, and Possession of Dangerous Drugs, and that he is presently on bail for another offence of Armed Robbery.

4. Counsel on behalf of the Applicant relies on the constitutional presumption of innocence, as well as the Applicant's promise that he will not abscond or commit further offences while on bail. She further submits that there is no evidence to suggest that the Applicant is a flight risk or will interfere with witnesses, and suggested that the Applicant has always attended court when required, and has paid his debt to society with respect to his antecedents.
5. In response, the Respondent submits that the evidence is cogent, and that there is a serious concern that the Applicant will commit further offences if granted bail, given his antecedents and the fact that he was on bail at the time of the commission of the present offence. safety would be endangered, and that the Applicant is a threat to public safety given his previous convictions for firearm offences.

LAW AND ANALYSIS

6. The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

“Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty”.

7. Furthermore, Article 19(1) provides as follows:

“19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;**
- (b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
- (c) for the purpose of bringing him before a court in execution of the order of a court;**
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;**
- (f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or**

treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.

(2)...

(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial”.

8. The relevant provisions of the Bail Act Chapter 103 read as follows:

“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;

(b)...

(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), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.

(2A) For the purposes of subsection (2) (a) ...

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.

(2B) For the purposes 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 and antecedents of the person charged, the need to protect the safety of the 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. The factors referred to in Part A are:

“PART A

In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

(a) whether there are substantial grounds for believing that the defendant, if released on bail, would-

(i) fail to surrender to custody or appear at his trial;

(ii) commit an offence while on bail; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;

(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;

(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(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;

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.”;

9. As the Applicant has only been in custody for a few months, there is no contention that he has been held for an unreasonable length of time. This application therefore focuses on section 4(2)(c) of the Bail Act. In an application for bail pursuant to section 4(2)(c), the court is required to consider the relevant factors set out in Part A.

10. In considering those factors, I note that the Applicant is charged with a serious offence, involving the use of firearms. With respect to the seriousness of the offence, I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

11. In the Court of Appeal decision of *Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011*, it was stated 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. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail”.

12. I note also paragraph 30 of *Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019* where it states:

“30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant’s resources, family connections..

13. While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with Armed Robbery which, in considering the possible penalty which would follow a conviction, raises the issue of the likelihood of not appearing for trial.
14. That likelihood must be contrasted with the nature of the evidence against the Applicant. In *Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016*, Allen P., at *paragraph 34* stated,

“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

15. In considering the cogency of the evidence, I note the following statement from the Court of Appeal in *Stephon Davis v DPP SCCrApp. No. 20 of 2023*:

In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is

plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in *Ellis Taibo* [1996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

16. In considering what has been placed before me, the intimation is that the Applicant has confessed to being involved in this offence. While such evidence may be subject to challenge at trial, I am constrained to conclude that, on a prima facie basis, there is cogent evidence against the Applicant.
17. I am also extremely concerned that the Applicant has previous convictions for firearm and ammunition offences, and that he was on bail at the time of the commission of the present offence. In these circumstances, I am satisfied that there is a reasonable basis to conclude that the Applicant would re-offend if released on bail, which are factors set out in Part A of the Bail Act to be considered by the court in determining whether bail should be granted. I am also satisfied that there is a need to protect the public order, as the current matter and the pending matter both involve firearms, and the use of firearms to commit offences.

CONCLUSION

18. In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view those conditions might suffice if the only concern was the likelihood of absconding. However, in my view those conditions would not serve to prevent any re-offending, or to protect the public order.
19. In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 25th day of March A.D., 2024



**Neil Brathwaite
Justice**

