COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2023/CRI/bail/00146

BETWEEN

JUNIOR MAGLOIRE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: **Mr Geoffrey Farquharson for the Applicant**
Ms. Janessa Murray for the Respondent

Hearing Date: **14th May A.D. 2024**

Ruling Date: **5th June A.D. 2024**

RULING ON BAIL

1. According to the affidavit filed in support of this bail application, the Applicant seeks bail on a charge of Assault, and has been in custody since 17th July 2023. He states that he has one previous conviction for Drug Possession, and that the case against him is inherently weak and tenuous as it is based on an identification from an untruthful or mistaken witness, and that at the time of the alleged incident he was at home, and therefore has an alibi. The Applicant further states that he anticipates a complete exoneration at trial, and that there is no real evidence that he will abscond, interfere with witnesses, reoffend, or interfere with the due administration of justice.

2. In seeking to oppose the application, the Respondent filed the three affidavits. In the affidavit of Carmen Brown, Counsel in the Office of the Director of Public Prosecutions, to which is exhibited a number of reports, the Respondent states that the Applicant has four pending matters, and one previous conviction for Possession of Dangerous Drugs. Those pending matters include an allegation of Assault with a Deadly Weapon, which allegedly occurred on 18th January 2023, and for which the Applicant failed to appear in court, as a result of which a warrant was issued for his arrest. The Applicant was also

ordered to perform fifty hours of community service as a result of an assault matter. According to the Respondent, the matter has been adjourned several times for the Applicant to report on the status of the community service.

3. The Respondent notes that the affidavit of the Applicant states that he is charged with "Assault", and object that there is actually no application for bail on the charge of Murder. Nevertheless, the Respondent has included in the affidavit in response a statement of a witness who has identified the Applicant as the person who shot the deceased. The Respondent further avers that the deceased in this matter, Alando Curtis, was on bail for two murders at the time of his demise, and is reputed to be a gang leader in the Fox Hill community.

4. The Respondent has also filed the affidavit of Sergeant Christopher Wilchcombe, a Prison Liaison Officer, who states that the Applicant is housed at the Bahamas Department of Corrections in F-Block, with members of a gang known as "Mad Ass". Also before the court is the affidavit of Inspector Tamara Edwards, of the Central Intelligence Bureau, who states that the Applicant is known to that bureau as a member of the Mad Ass gang, and was previously shot at a bar called "Da Bing" on 19th March 2022. It is also to be noted that the witness who identified the Applicant also states that the Applicant was previously shot at that location.

5. On behalf of the Applicant it is submitted that as a result of a Practice Direction issued by Sir Burton Hall with respect to the old system of assizes, persons who were not indicted within a specified period of time were automatically entitled to be admitted to bail, and notes that this Applicant has not yet been served with a Voluntary Bill of Indictment to remove his matter to the Supreme Court. He further submits that the evidence in this case is not cogent, as the investigators ignored an alibi provided to them, and chose instead to rely on the statement of an untruthful or mistaken witness.

6. It is further submitted on behalf of the Applicant that there the court must have real, substantive evidence of the likelihood of reoffending or absconding, or the likelihood that the Applicant would interfere with witnesses or otherwise undermine the administration of justice. It is suggested that no such evidence exists in this case. Counsel suggests that a long list of convictions might be sufficient to cause the court to be satisfied of the likelihood of reoffending, but note that the Applicant has only one previous conviction. It is further submitted that a bald assertion that the Applicant would interfere with witnesses is not sufficient, and that any issue of detaining the Applicant for his own safety must relate to the Applicant himself, and not to general concerns regarding societal conditions.

7. In response, counsel for the Respondent object to the manner of the application, which makes no reference to the charge of murder, and which fails to comply in other material respects with a Practice Direction issued by then Chief Justice Sir Michael Barnett which mandates that an application for bail should include the docket, as well as the National Insurance number of the Applicant. Counsel further submits that the evidence in this case is cogent, and that the Applicant has already failed on one occasion to appear in the Magistrate's Court, and is therefore not likely to appear for his trial. Counsel further submits that there is a danger to the public, as there is evidence that the Applicant is affiliated with a gang, and that the victim in this matter was also affiliated with a gang, and that members of the public might be caught in a cross fire if the Applicant is released and there is retaliation.

LAW AND ANALYSIS

8. The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

> "5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.
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> 6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:
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> "...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

9. At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

10. 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".***

11. 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".

12. 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.";

13. In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

14. In considering those factors, I note that the Applicant is charged with a serious offence, involving the use of a firearm, and resulting in the death of one person. 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.

15. 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".***

16. 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..***

17. While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with murder which, in considering the possible penalty which would follow a conviction, raises the issue of the likelihood of not appearing for trial.

18. 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."***

19. 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 [11996] 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."

20. In considering what has been placed before me, I note that the affidavit in response states that the Applicant has been identified by an eyewitness as the person who fired shots at which resulted in the death of the victim. That evidence in my view rises to the level of a prima facie case as is required in Stephon Davis decision above. I note the Applicant's submission that the prosecution is relying on an untruthful or mistaken witness. However, in my view, that is not an issue which need concern the court in a bail application, as those are matters for trial.

21. While bearing in mind the presumption of innocence, I am concerned that in this matter an extremely wanton disregard for human life was displayed, given the manner of the killing, as the witness alleges that the Applicant pointed a handgun directly in the face of the victim. I am also satisfied that the Applicant is in fact affiliated with a gang, and there is prima facie evidence that he has been involved in a killing which appears to be the result of a gang conflict. I note also that the Applicant has a pending matter in which he is alleged to have pointed a gun in another's face. In these circumstances, I am satisfied that there is a reasonable basis to conclude that there is a need to protect the public, having regard to the nature of this offence and the manner of commission, and the affiliations of the Applicant and the deceased, and the pending matter.

22. Furthermore, having regard to the nature of the offence and the possibile penalty, I am concerned that the Applicant will not appear for his trial. That concern is exacerbated by the fact that the Applicant was on bail at the time of the instant allegation, and that on at least one occasion, a warrant has already been issued for the arrest of the Applicant as a result of a failure to appear in court when required so to do. Counsel for the Applicant has suggested from the bar table that the Applicant did not appear because he was in custody. Statements from the bar table do not constitute evidence. There is therefore no evidence of this assertion.

CONCLUSION

23. 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. However, those conditions do not serve to deter a person who truly does not intend to appear for his trial. It is also my view

those conditions would not serve to protect the public order, which I consider to be a grave concern in this case.

24. 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 5th day of June A.D., 2024

Neil Brathwaite
Justice