

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
CRIMINAL LAW DIVISION  
2023/CRI/bail/00085**

**B E T W E E N**

**TREYVAR TAYLOR**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**Appearances:**       **Ms. Miranda Adderley for the Applicant**  
                              **Ms. Destiny Morley, Ms. Kara White for the Respondent**

**Hearing Date:**       **15<sup>th</sup> July A.D. 2024**

**Ruling Date:**         **7<sup>th</sup> August A.D. 2024**

**RULING ON BAIL**

1. The Applicant seeks bail on charges of Armed Robbery, Receiving, and Possession of Forged Currency with which he was charged on 13<sup>th</sup> November 2023. The application is supported by an affidavit in which the Applicant avers that he is 23 years old and of good character, that he was employed as a jet ski operator prior to his incarceration, and will have accommodations at Wind Street should he be granted bail. He acknowledges that he has a pending matter of Murder and Attempted Murder, for which he was granted bail on 12<sup>th</sup> June 2023, but notes that he has yet to receive a Voluntary Bill of Indictment in that matter.
  
2. The Applicant has also exhibited to his affidavit an affidavit from the complainant in the present matter, Larousse Philus, who notes that he was not able to identify the persons who robbed him as they wore masks, and says that he is no longer interested in pursuing this case as he has retrieved his car, which was taken during the incident.

3. The Applicant maintains his innocence, states that he is not a flight risk and will be present for all proceedings, and prays in aid his strong family ties.
4. In seeking to oppose the application, the Respondent proffered the affidavit of Tenielle Bain, to which is exhibited an earlier affidavit of Vashti Bridgewater filed in February 2024. To that affidavit are exhibited a number of reports, from which it can be gleaned that the complainant was robbed of his vehicle and wallet, and left a cell phone in the vehicle, which was tracked that same evening to the residence of the Applicant, from whose underwear officers allegedly retrieved a key for the vehicle. The Applicant is alleged to have told officers that he had purchased the car fifteen minutes earlier for parts. A report from Metro Security Solutions was also obtained, and reportedly places the Applicant at the scene of the offence.
5. Counsel on behalf of the Applicant submits that the evidence against the Applicant amounts at most to an allegation of receiving. Counsel relies on the constitutional presumption of innocence, as well as the authorities of *Dennis Mather v AG SCCrApp 96 of 2020* in which the learned President Sir Michael Barnett stated that bail should only be refused if there are substantial grounds for believing that the Applicant will not surrender for trial. Counsel further submits that being charged with an offence while on bail does not indicate a propensity to commit offences, and notes that the Applicant has no previous convictions. It is further submitted that there is no evidence that the Applicant will not appear for his trial or interfere with witnesses, and emphasizes that the Applicant will be greatly prejudiced by pre-trial incarceration, as well as the delay in proceeding with his matters.
6. In response, the Respondent submits that there has been no change of circumstances since the Applicant was refused bail in February 2024, and notes that there has been progress, as a Voluntary Bill of Indictment in the instant matter has already been presented, while the Voluntary Bill of Indictment in the murder matter is expected to be presented on 15<sup>th</sup> August 2024. Counsel questions the authenticity of the affidavit provided by the complainant, as there is no identification attached, and suggests that the Applicant should be kept in custody to protect the public, as he was charged with a serious offence while on bail for another serious offence

### LAW AND ANALYSIS

7. 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.

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:

"...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..."

8. 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."

9. 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".

10. 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”.

**11. 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.”;

**12.** 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.

**13.** In considering those factors, I note that the Applicant is charged with a serious offence, involving the use of a firearm. 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.

14. 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”.

15. 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..

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

17. 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.”

18. 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.”

19. In considering what has been placed before me, I note that the affidavit in response states that the Applicant was arrested a short time after the offence in possession of the vehicle taken during the offence. While counsel for the Applicant submits that this amounts at most to Receiving, I am constrained to note the doctrine of recent possession, which raises a presumption that a person found in possession of stolen property may be presumed to have stolen it. That presumption is strengthened by the short space of time which passed between the robbery and the recovery of the vehicle. The evidence in this case is further strengthened by the monitoring device evidence. While I bear in mind that the court is required only to consider whether a prima facie case is made out, in my view the evidence in this case is extremely cogent.

20. The strength of the case against the Applicant is not in my view undermined by the contention that the complainant has indicated that he did not identify the assailants, as that does not appear to be a plank in the Crown's case. Furthermore, an indication that the complainant does not wish to proceed, if I accept the affidavit, does not change the fact that there exists cogent evidence against the Applicant, and the charges have not been withdrawn by the relevant authorities.

21. I must also indicate that I am extremely concerned by this affidavit which, as the Respondent has indicated, contains no identification and no way of verifying that it was indeed sworn by the complainant. When asked how the affidavit came to be in the possession of the Applicant, counsel indicated that the document was delivered to her chambers by an unknown person. In my view, this information underscores the difficulty of verification of the affiant, but even more worryingly, it begs the question of how the complainant, if it was indeed the complainant who

swore the affidavit, knew to deliver it to the chambers of counsel for the Applicant. This raises a serious issue of the likelihood of interference with witnesses.

22. In considering the question of bail, the court is required to conduct a balancing exercise between the Applicant's right to liberty, and the need to protect the public. In conducting that exercise, I accept that the charges in this case are extremely serious, and the evidence cogent. I am also concerned about the lack of timely progress with respect to the pending murder charges, but note that there has in fact been progress on the instant charges. Of greater concern to me, however, is the likelihood of interfering with witnesses, and the threat to public order which that entails.

**CONCLUSION**

23. In the circumstances of this case, I am satisfied that the balance must weigh in favour of protecting public order. I have also considered whether conditions could be put in place, and am of the view that while conditions could be put in place to ensure attendance at trial, no conditions could be put in place to protect public order, particularly in circumstances where the Applicant is alleged to have been subject to wearing an ankle monitor at the time he is alleged to have committed the current offences. Bail is therefore refused.

**Dated this 7<sup>th</sup> day of August A.D., 2024**



**Neil Brathwaite  
Justice**

