

IN THE SUPREME COURT

Criminal Division

Between

ALJARON STUBBS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns
Appearances: Ms. Cassie Bethel for the Applicant
Ms. Jacqueline Burrows for the Respondent
Hearing Date: 22 November 2023

RULING

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Application for bail – Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 (as amended) – Conspiracy to Commit Murder contrary to sections 83(2) and 291(1)(b) of the Penal Code, Chapter 84 (as amended) – Whether the Applicant is a fit and proper candidate for the granting of bail – Application for bail denied – Applicant not a fit and proper candidate for bail

INTRODUCTION

1. Aljaron Stubbs, the Applicant herein, is a 21-year-old Bahamian male charged with Murder and Conspiracy to Commit Murder contrary to provisions of the Penal Code, Chapter 84 (as amended), which offences are said to have occurred on 10 February 2023, and 13 March 2023, respectively.
2. The Applicant was arraigned on 20 March 2023 before Chief Magistrate Joyann Ferguson Pratt (as she then was) in Magistrate Court No. 9. The matter was adjourned to 26 October 2023 and the Applicant was remanded to The Bahamas Department of Corrections. The Voluntary Bills of Indictment (VBIs) with respect to the charges were filed on 11 July 2023 and 16 August 2023, respectively.
3. The Applicant previously applied for bail but was denied by the Honourable Mr. Senior Justice Bernard Turner (as he then was). This application is now fresh before the Court for its consideration and determination.

4. The Applicant made this application by way of a Summons filed on 5 October 2023. The application was supported by an Affidavit and Supplemental Affidavit sworn by the Applicant filed on 5 October 2023 and 14 November 2023, respectively.
5. The Respondent opposed the application by way of an Affidavit-In-Response sworn by Xandrell Bain, Counsel and Attorney-at-Law employed with the Respondent's Office, filed on 11 December 2023.
6. The Court has read the Affidavits of the Applicant and Respondent and has heard the submissions.

APPLICANT'S AFFIDAVIT EVIDENCE

7. The Applicant stated, that –
 - i. he was born on 11 September 2002 in the Commonwealth of The Bahamas and is 20 years of age;
 - ii. he pleaded not guilty and will be defending the charges at trial;
 - iii. he does not have any previous conviction(s) before the Court in the Commonwealth of The Bahamas;
 - iv. he does have pending matters for Attempted Murder and Possession of a Firearm with Intent to Endanger Life before the Court(s) in the Commonwealth of The Bahamas;
 - v. should the Court admit him to bail, he will have accommodations;
 - vi. prior to his incarceration, he was employed at J & S Sewer Company, New Providence, The Bahamas;
 - vii. he respectfully requests that the Court admit him to bail pending his further court appearances and for the following reasons, that –
 - a. he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded; and
 - b. he will be disadvantaged in his ability to support himself, and assist his family;
 - viii. if he is granted bail, he will comply with all rules and regulations set out by the Court; and
 - ix. he is a fit and proper candidate for bail.

RESPONDENT'S AFFIDAVIT EVIDENCE

8. The Respondent stated, that –
 - i. the Applicant was granted bail on 15 June 2022 by the Court in the amount of twenty thousand dollars (\$20,000.00);
 - ii. it is alleged that, while on bail for the charges of: Attempted Murder (2 Counts), Possession of a Firearm with the Intent to Endanger Life (4 Counts), Possession of a Firearm with Intent to Resist Lawful Arrest (2 Counts), Possession of an Unlicensed Firearm (2 Counts) and Possession of Ammunition (2 Counts) that occurred on 30 April 2022, that the Applicant is alleged to have committed the offences of Murder and Conspiracy to Commit Murder;
 - iii. the offences of Murder and Conspiracy to Commit Murder, for which the Applicant is currently charged are of a serious nature and fall under Part C (section 4(3)) of the Bail Act, Chapter 103;
 - iv. the evidence in these matters are strong and cogent;

- v. the Applicant attempted to evade police officers by hiding in the attic of a residence in Elizabeth Estates;
- vi. considering the nature and seriousness of these offenses, the strength of the evidence, the character and antecedents form of the Applicant, and his propensity to commit crimes of a similar nature, there is an overriding need to protect public safety and public order;
- vii. there is a need to protect the safety of witnesses; and
- viii. the Applicant is not a fit and proper candidate for bail.

ISSUE

9. The disposal of this application requires the Court to address one main issue, namely, whether the Applicant is a fit and proper candidate to be granted bail?

LAW AND DISCUSSION

10. Bail in criminal proceedings is governed by the Constitution of the Commonwealth of The Bahamas ("the Constitution"), Bail Act, Chapter 103 (as amended), and judicial authorities. This is notwithstanding that the Court, as the superior court of record, has been seized with the inherent power to grant bail to persons charged with criminal offences (even the most serious offences) from time in memoriam.
11. The Court is mindful that the primary objective of detaining an accused person is to ensure his attendance at trial. If the accused person's attendance at trial can be reasonably ensured otherwise than by his detention, he should be admitted to bail.
12. In determining this application, the Court reviewed the relevant provisions of the Constitution, Bail Act (as amended), and judicial authorities.
13. **Article 20(2)(a) of the Constitution** ensures that every person charged with a criminal offence is afforded the right to the presumption of innocence save he or she is found guilty or pleads to his or her guilt. **Article 20(2)(a)** provides—

"20. (2) Every person who is charged with a criminal offence –
 (a) shall be presumed to be innocent until he is proved or has plead guilty."

14. **Article 19(1) and (3) of the Constitution** ensures that no person is denied of his right to personal liberty without just cause. It provides –

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

(a) ...

(b) ...

(c) ...

(d) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(e) ...

(f) ...

(g) ...

...

(3) Any person who is arrested or detained in such case as 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 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 as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial. “

(Emphasis added)

15. The Applicant is charged with two offences listed in Part C of the First Schedule (Murder and Conspiracy to Commit Murder). The Court, in determining this application, pays regard to **section 4(2)(2A) and (2B) of the Bail Act (as amended)**, which provides –

“4(2) Notwithstanding any other provisions of the 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; or

(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 have 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 consideration.”

(Emphasis added)

16. **Part A of the First Schedule** (insofar as relevant to this application) outlines factors the Court must consider in bail applications. **Part A of the First Schedule** states –

“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) ...

(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 witness ;

(b) ...

(c) ...

(d) ...

(e) ...

- (f) Whether having been released on bail previously, he is charged with 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..."

17. In bail applications, the burden rests on the Respondent, having regard to the Applicant's fundamental rights to the presumption of innocence and personal liberty afforded by the Constitution, to satisfy the Court that he ought not to be granted bail. In order for the Respondent to discharge this burden, evidence must be produced to support their opposition to the grant of bail. Naked or bare assertions are meaningless. If that was not the case, it would be unfair to the accused person: **Johnathan Ambrister v The Attorney General SCCrApp No. 145 of 2011 and Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019.**

Tried within a reasonable time

18. With respect to this consideration, the Applicant did not advance in his Affidavit that he would not be tried within a reasonable time nor did the Respondent indicate that the Applicant would not be tried within a reasonable time or that his continued detention is unjustified. The Court, having regard to the circumstances and the absence of evidence to the contrary, is satisfied at this time that the Applicant will be tried within a reasonable time.

Interfere with/safety of witnesses

19. Apart from the Respondent's bare or naked assertion that the Applicant should remain in custody for the safety of witnesses, no evidence was presented before the Court that the Applicant's release from custody on bail would impugn or interfere with the safety of the witnesses in his case. In the absence of evidence to the contrary, the Court is not satisfied that the Applicant, if released on bail, will interfere with or impugn the safety of witnesses in his case or otherwise pervert the course of justice.

Seriousness of the offence and likelihood of absconding

20. The seriousness of the offence, though an important consideration, is not a stand-alone ground for the refusal of bail. The seriousness of the offence factor is coupled with additional factors, namely, the strength of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding before trial. In **Jeremiah Andrews (supra)**, Evans JA at paragraph 30 pronounced –

"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 consideration of other relevant factors disclosed in

evidence. E.g. the applicant's resources, family connections, employment status, good character, and absence of antecedents. "

21. Notwithstanding, it has been recognized that in cases involving murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail: **Johnathan Ambrister (supra)**.

22. As aforementioned, the Applicant is charged with Murder and Conspiracy to Commit Murder – two of the most serious offences a person can be charged with. In The Bahamas, particularly in the first quarter of 2024, the murder rate is climbing at an alarming rate. This alarming murder rate has attracted local and international attention and has drawn criticism from many factions of society. Most concerning is the apparent notion that many of the murder victims are accused persons charged with serious offences such as murder, who are released on bail. Thus, bringing the issue surrounding bail into much debate. The Court, while cognizant of the current state of affairs in the country and likewise concerned, must nevertheless perform the difficult exercise of balancing the interests of all the parties to the criminal proceedings – the Applicant, witnesses, and the society at large. While Murder and Conspiracy to Commit Murder are serious offences, that is not within itself a reason to deny the Applicant bail given the law as it currently stands. The Applicant's denial of bail may only be warranted where the safety of potential witnesses, public safety, and public order trumps his fundamental rights of the presumption of innocence and personal liberty.

23. Bail now more than ever is a vexing and controversial issue. In **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 276 of 2014**, Allen P at paragraphs 5 and 11 stated –

"5. Bail is increasingly becoming the most vexing, controversial, and complex issue confronting free societies in every part of the world. It highlights the tensions between two important but competing interests: the need of the society to be protected from persons alleged to have committed a crime; and the fundamental constitutional cannons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

...

11. The general right to bail clearly requires judges on such an application to conduct a realistic assessment of the right of the accused to remain at liberty and the public interest 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. "

24. In the present application, no evidence was advanced by the Respondent that the Applicant is a flight risk. The Applicant, in his Affidavit, requested to be admitted to bail pending his further court appearances. It follows therefore that the Applicant facing these serious charges for which he is liable to some of

the severest penalties known to law, if convicted, may have an incentive to abscond.

25. Lord Bingham of Cornhill in the Board decision of **Hurnam v The State (Mauritius) [2005] UKPC 49** at paragraph 15 stated –

“15. It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail.”

26. The Court, having regard to the circumstances, is not satisfied that the inference may be weakened by the Applicant's: (i) citizenship status, (ii) employment status, or (iii) bare or naked assertions that his continued incarceration will disadvantage his ability to adequately prepare his defence or ability to support himself and his family.

Strength and cogency of the evidence

27. The Applicant denies his involvement in the alleged offences, maintains his innocence, and indicates his willingness to defend the charges at trial. The Respondent advanced that the evidence against the Applicant is strong and cogent. Concerning the Murder charge, the Respondent exhibited to its Affidavit the statement of Troy Mulling who connected the Applicant to the offence and positively identified the Applicant in a twelve-man photo gallery lineup. The Applicant, on the other hand, exhibited to his Supplemental Affidavit the Affidavit of Michael Pratt, a prosecution witness, in which Michael Pratt purports to recant a previous statement made to police that connected the Applicant to the vehicle used in the offence. The Pratt Affidavit further purports that the police statement was given under circumstances of duress and oppression. However, the statement of Michael Pratt is not before the Court nor did the Respondent seek to rely on it to oppose the Applicant's bail application. In any event, the issue of a recanting witness is not one to be considered by the Court for the purposes of a bail application. And in this case, the very document that the Applicant seeks to rely upon is one that is not properly executed and in the circumstances could not even be considered. Concerning the Conspiracy to Commit Murder charge, the Respondent exhibited to its Affidavit the statements of D/Sgt. 2735 Raphael Miller, D/Sgt. 3105 Nelson Miller, and D/Sgt. 1111 Ackeem Nabbie, which purports to show that the Applicant is the owner of a cellular device and participant in messages contained therein with a co-accused conspiring to murder D/Sgt. 2735 Raphael Miller.

28. Notwithstanding the above circumstances, the Court is mindful of the limitations of its duty in considering bail applications. It is now trite law that a judge hearing a bail application is not to weigh up evidence that may be adduced in a trial. Bail applications are not forums for conducting mini-trials,

any challenge to the intended evidence is to be reserved for the substantive trial. Allen P in **Codero McDonald v The Attorney General SCCrApp No.195 of 2016** at paragraph 34 adjudged –

“34. 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.”

29. The Court’s role in bail applications is further expounded upon in **Stephon Godfrey Davis v The Director of Public Prosecutions SCCrpp. No.108 of 2020**. Isaacs JA at paragraphs 32-34 enunciated –

“32. ... The question of the sufficiency of the Prosecution’s evidence is a matter for the jury. This is not to say that a judge viewing the facts cannot form an impression about the strength of the Prosecution’s case, for example, there is photographic or video evidence along with a tracking report obtained through an attached electronic monitoring device all of which showing that the accused person was at an entirely different location than where the offence is alleged to have happened, it would be perverse for a judge in those circumstances to view the case against the person as cogent.

33. However, where the case against the accused person is supported by statements of eyewitnesses or purported confessions that tend to suggest the applicant for bail may be involved in the offence charged, a judge may conclude that the evidence against the appellant is cogent.

34. **Alleged inconsistencies in the evidence of a witness and the recanting of statement and what weight may be attached to the evidence of such inconsistent or recanting witnesses are within the province of the jury; does not call for an evaluation by the judge.**

(Emphasis added)

30. All considered, the Court is satisfied that the evidence advanced by the Respondent is strong and cogent, and capable of raising a reasonable suspicion of the Applicant’s involvement in the offences.

Character and Antecedents

31. In **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp. No. 29 of 2020**, Barnett P at paragraph 19 affirmed –

“19. As to antecedents, it is not required to show that the appellant has lived a habitual life of crime before taking his antecedents into account.”

32. In **Tyreke Mallory v The Director of Public Prosecution SCCrApp. No. 142 of 2021**, the appellant had been convicted of multiple offences and while on bail for Armed Robbery was charged with Murder. Evans JA at paragraphs 24-25 stated –

"24. In these circumstances this issue goes beyond whether the appellant will appear for his trial but turns on whether he is a threat to society. The learned judge's decision when read as a whole is based on his view articulated in paragraph 33 as follows:

"33. Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored."

25. In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, 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 pending trial."

33. In **Jevon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019**, the Court of Appeal provided of examples that would lead the Court to conclude that an accused person applying for bail may be a danger to public safety or public order. Writing for the Court, Crane-Scott JA at paragraph 68 stated –

"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 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; or again evidence, for instance, of any known or suspected gang affiliation.** No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of good character, strong family and community ties and the fact that he had a long and unblemished record of service within the RBDF."

(Emphasis added)

34. The Applicant has no previous convictions before the Courts in the Commonwealth of The Bahamas. The Respondent in its Affidavit advanced that considering the nature and seriousness of the offences, the strength of the evidence, the character and antecedent of the Applicant, and his propensity to commit offences of a similar nature, there is an overriding need to protect public safety and public order. Attached to the Respondent's Affidavit is the Applicant's Criminal Record Antecedent Form. It is noted from the Applicant's Criminal Record Antecedent Form that the Applicant has three pending charges, namely, (i) Attempted Murder, (ii) Murder, and (iii) Conspiracy to Commit Murder. The latter two charges are the subject of the present application.

35. The Respondent in its Affidavit further advanced that while on bail for the charges of: Attempted Murder (2 Counts), Possession of a Firearm with the Intent to Endanger Life (4 Counts), Possession of a Firearm with Intent to Resist Lawful Arrest (2 Counts), Possession of an Unlicensed Firearm (2 Counts) and Possession of Ammunition (2 Counts), the Applicant committed the offences subject of the present application. The Applicant admitted to having the pending matters for Attempted Murder and Possession of a

other offences nor are the other offences listed on the Applicant's Criminal Record Antecedent Form. The status of these charges is unknown.

36. Notwithstanding the Applicant not having any previous convictions and currently an unblemished character, the Court is of the view that this application goes beyond whether the Applicant would appear for trial but turns to whether he is a threat to public safety and public order. There is evidence before the Court that the Applicant has pending charges for violent or firearm offences. The Applicant having been released on bail previously is charged subsequently with either an offence similar to that for which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year. Though the Applicant's previous charges are likewise serious, the offences for which he is presently charged can reasonably be perceived as an escalation of violent or firearm offences. Taking all this into consideration, the Court is satisfied that the Applicant is an individual whom it can be reasonably inferred has the propensity to commit further offences if granted bail and is a threat to public safety and public order.

37. Moreover, the evidence, in the Court's view, raises a reasonable suspicion of the commission of the offences by the Applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial. Further, the Court is not satisfied that there are any conditions that could be imposed by the Court to assuage its concern of the Applicant being a threat to public safety and public order. To admit the Applicant to bail there is a heightened likelihood that the Applicant will commit further offences. Public safety and law and order are paramount and in these circumstances cannot be ignored.

CONCLUSION

38. In these circumstances and having regard to the foregoing, the Court is satisfied that the Applicant is not a fit and proper candidate for bail at this time. The application for bail is hereby denied. Should the Applicant's circumstances change in the interim, he is at liberty to reapply to the Court for admission to bail.

Dated this 7th day of February 2024


Justice Guillimina Archer-Minns