

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2024/CRI/BAL/00106

Between

ASHTIN SIMMS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Mr. Ashtin Simms appearing *pro se*

Mr. Uel Johnson with Ms. Tennielle Bain appearing for the Respondent

Hearing Dates: 5 June 2024; 12 June 2024; 26 June 2024; 3 July 2024; 31 July 2024; 14 August 2024; 21 August 2024; 28 August 2024; and 4 September 2024

RULING – BAIL DECISION

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Application for admission to bail – Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84 (as amended) Receiving contrary to section 358 of the Penal Code, Chapter 84 (as amended) – Possession of an Unlicensed Firearm contrary to section 5 (a) of the Firearms Act, Chapter 213 (as amended) – Possession of Ammunition contrary to section 9 (2) (a) (i) of the Firearms Act, Chapter 213 (as amended) – Whether the Applicant is a fit and proper candidate for admission to bail – Application for admission to bail granted – Conditions imposed

ARCHER-MINNS J.

Introduction

1. Ashtin Simms, the Applicant named herein, is a nineteen-year-old Bahamian male who, being concerned with others, stands charged with four (4) counts of Armed Robbery, one (1) count of Receiving, one (1) count of Possession of an

Unlicensed Firearm, and one (1) count of Possession of Ammunition contrary to the relevant provisions of the Penal Code, Chapter 84 (as amended) and Firearms Act, Chapter 213 (as amended). The offences allegedly occurred on 22 February 2024, 30 March 2024, and 31 March 2024.

2. The Applicant was arraigned in Magistrate Court No. 9 before Chief Magistrate Roberto Reckley on 8 April 2024 concerning the offences. The Applicant was not required to enter a plea. The matter was adjourned and the Applicant was remanded to The Bahamas Department of Correctional Services (“BDOCS”) pending the service of his Voluntary Bills of Indictment (“VBIs”).
3. The Applicant moved the Court relative to the present application for admission to bail via a BDOCS Bail Request Form dated 9 May 2024.
4. The Respondent opposed the present application by way of an Affidavit-In-Response sworn by Calnan Kelly, Counsel and Attorney-at-Law attached to the Respondent’s Office, filed on 10 June 2024 (“the Kelly Affidavit”).
5. The Court delivered a written decision dated 3 July 2024 relative to the present application. In the written decision, the Court pronounced that it was not in the position to make a definitive decision regarding the Applicant’s admission to bail as the Court was not certain that all of the relevant information for such determination was before the Court. The Court further indicated that it must be seized with all the pertinent information to make a fair and proper decision. The Court adjourned the matter to 31 July 2024 for further submissions.
6. The Respondent further opposed the present application by way of a Supplemental Affidavit-In-Response sworn by Timothy Bailey, Counsel and Attorney-at-Law attached to the Respondent’s Office, purportedly filed on 28 August 2024 (“the Bailey Affidavit”).
7. The Court has read the Applicant’s BDOCS Bail Request Form and the Respondent’s affidavit evidence and has heard the submissions made by the respective parties.

THE APPLICANT’S SUBMISSIONS

8. The Applicant appeared *pro se* and submitted to the Court, *inter alia*, that –
 - i. he was a young man who along with his brother was the sole provider for their household;
 - ii. he was not affiliated with or is in any way involved with gang activity;
 - iii. he was desirous of continuing to provide assistance to his mother and to relieve his brother from some of the financial strain;
 - iv. prior to his incarceration, he was employed in Palm Cay doing roofing as well as he was a jet ski operator;
 - v. he was previously convicted as a juvenile and spent six (6) months in the Simpson Penn Centre for Boys and has not been in any problems since adulthood;
 - vi. he has no pending matters and maintains that he was at the wrong place at the wrong time; and

- vii. his two co-accused have since been admitted to bail in relation to these offences and the Respondents did not oppose their applications for admission to bail.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

9. The Kelly Affidavit stated essentially, that –

- i. the Applicant appeared in Magistrate Court No. 9 before Chief Magistrate Roberto Reckley on 8 April 2024. He was charged in case no. 1-24-042738 with Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84; Receiving contrary to section 358 of the Penal Code, Chapter 84; Possession of an Unlicensed Firearm contrary to section 5(a) of the Firearms Act, Chapter 213; and Possession of Ammunition contrary to section 9(2)(a)(i) of the Firearms Act, Chapter 213. Chief Magistrate Roberto Reckley adjourned the matter to 4 April 2024 for the service of a Voluntary Bill of Indictment. The Applicant was then remanded as a result;
- ii. the Applicant appeared in Magistrate Court No. 9 before Chief Magistrate Roberto Reckley on 8 April 2024. He was charged in case no. 1-24-042115 with Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84; Receiving contrary to section 358 of the Penal Code, Chapter 84; Possession of an Unlicensed Firearm contrary to section 5(a) of the Firearms Act, Chapter 213; and Possession of Ammunition contrary to section 9(2)(a)(i) of the Firearms Act, Chapter 213. Chief Magistrate Roberto Reckley adjourned the matter to 24 June 2024 for service of a Voluntary Bill of Indictment. The Applicant was remanded as a result;
- iii. the Applicant has a previous conviction. A copy of the antecedent report is attached and marked as "**Exhibit CK-1**";
- iv. Kianna Ritchie stated that while at Rubis Gas Station on Thursday 22 February 2024, the Applicant was armed with a high-powered firearm while concerned with others and threw her to the floor. He then took her keys and robbed her of a dark brown 2015 Acura TLX L/P no. AV3888 and an Alcatel cell phone. Kianna Ritchie identified the Applicant in position no. 12 on 4 April 2024. A copy of the statement of Kianna Ritchie is attached and marked as "**Exhibit CK-2**";
- v. Sergeant 3535 Shantra Bell on 4 April 2024 compiled a twelve-man photo array placing the Applicant in position no. 12. A copy of the statement of Sergeant 3535 Shantra Bell and photo array are attached and marked as "**Exhibit CK-3**";
- vi. Constable 4470 Deangelo Goodman conducted a record of interview with the Applicant who confessed on 3 April 2024. The Applicant stated that he was along with three other males by the names of Sammy, Joshua, and Vardo. They pulled up to the Rubis Gas Station at Wulff Road in a red Nissan Cube, exited the vehicle, and went inside. The Applicant stated that while in the gas station, he was the "lookout man" and Vardo ran up to a woman and put her on the ground. The Applicant stated that Sammy had the rifle in his hand, and he was by the cash register trying to get the cashier to open the door. Joshua had a BB gun. The Applicant stated the robbery was unsuccessful as they did not get any money. A copy of the statement of Constable 4470 Deangelo Goodman is attached and marked as "**Exhibit CK-4**";

- vii. On Monday 1 April 2024, Inspector Patterson Percentie while on mobile patrol with Corporal 3879 Brandon Cooper received information of an attempted armed robbery in the area of Prince Charles in the vicinity of Saint Augustine Road. While at that location Inspector Percentie observed two males walking out of the bushes on the northern side of Saint Augustine Road who jumped over the eastern gate. The officers exited their police vehicle and instructed both males to show their hands and get on the ground. Both suspects were informed of the complaint. Inspector Percentie searched the first male who gave his name as Kentrell Cooper date of birth 24/04/05 of Alexandria Boulevard, Nassau Village. The second male was discovered to be the Applicant. Upon searching the bushes, Inspector Percentie discovered a firearm, namely, a mini .14 Black Ruger and 2 magazines taped together. One of the magazines contained 17 live rounds of .233 ammunition. The Applicant was arrested and cautioned for attempted armed robbery. A copy of the statement of Inspector Patterson Percentie is attached and marked as "**Exhibit CK-5**";
- viii. Bradley Lewis stated that on 31 March 2024 at approximately 9:00 pm, he was parked in the area of Montagu Beach with his girlfriend in a burgundy Nissan Note L/P No. AZ6326. He observed a silver Nissan March vehicle block the entrance/exit. Two males exited the vehicle, one of them was dressed in a skeleton mask, and black tracksuit with a machine gun in his hand. The other male was dressed in a white T-shirt, blue jeans pants, white mask with a dreadlock-type hairstyle. The male with the dreadlocks approached the driver's side of the vehicle and knocked on the window. He instructed them to exit the vehicle to which they complied. This same male asked for the keys to the vehicle and was told that it was in the ignition. Both males fled the scene in the stolen vehicle and were followed by the silver vehicle. A copy of the statement of Bradley Lewis is attached and marked as "**Exhibit CK-6**";
- ix. Constable 4470 Deangelo Goodman conducted a record of interview with the Applicant who confessed on 3 April 2024. The Applicant stated that he was along with "Kentrell". The Applicant and Kentrell approached the Complainant's vehicle and the Applicant knocked on the window. The Complainant exited the vehicle and the Applicant drove off in the stolen vehicle. He was questioned about the firearm and admitted it was discovered upon his arrest. A copy of the report of Constable 4470 Deangelo Goodman is attached and marked as "**Exhibit CK-7**";
- x. the Applicant was previously granted bail by the Magistrate in Court No. 2 for Unlawfully Carrying Arms in March 2020;
- xi. the evidence against the Applicant is overwhelming and cogent. The Applicant at the time of both armed robberies was armed and confessed to both offences. That the nature of the offences with which the Applicant is charged, the cogency of the evidence against the Applicant, and the likely sentence he may receive if convicted gives the Applicant an incentive to flee this jurisdiction. Also, if the Applicant is fitted with a monitoring device, the Court has no assurance that he will not tamper with it or completely remove it. There is nothing peculiar about the Applicant's situation that suggests his continued detention is unjustified; and
- xii. this Affidavit is made in opposition to the Application for bail on the following grounds as stated in Chapter 103 of the Bail Act: that there are substantial grounds for believing that the Applicant if released on bail, whether subject to conditions or not, would commit an offence

while on bail. Whilst the Applicant was already released on bail for Unlawfully Carrying Arms in 2020, he was subsequently charged with these offences. Therefore there are no conditions that the Court can impose to protect the public from the Applicant and therefore bail ought to be denied.

10. The Bailey Affidavit stated essentially, that –

- i. the Applicant was charged with Three (3) counts of Armed Robbery and one (1) count of Receiving contrary to sections 339(2) and 358 of the Penal Code, Chapter 84; and Possession of an Unlicensed Firearm and Possession of Ammunition contrary to sections 5(a) and 9(2)(a)(i) of the Firearms Act, Chapter 213;
- ii. the Applicant submitted a signed Application on 9 May 2024 in which he requested that he be granted bail for the above offences;
- iii. the Applicant appeared before Chief Magistrate Roberto Reckley on 8 April 2024 where he pleaded not guilty to the offences mentioned;
- iv. one of the offences for which the Applicant appeared was that which bears Police Case No. 1-24-023878 in which he was charged with Armed Robbery of Kianna Ritchie which occurred on 22 February 2024;
- v. the Applicant while being concerned with others entered the Rubis Gas Station situated on Wulff Road, and held a firearm to the head of Ms. Ritchie and took the keys to her vehicle, and left that establishment in what was described as a red Nissan Note and the vehicle which belonged to Ms. Ritchie. Attached and marked as Exhibit “**TB-1**” is a copy of her statement;
- vi. the second offence which bears Police Case No. 1-24-042115, is one in which the Applicant was charged with entering Smith’s Motel situated on East Street and robbing Anastacia Butler on 30 March 2024. Attached and marked as Exhibit “**TB-2**” is a copy of her statement;
- vii. the third offence for which the Applicant appeared was that which bears Police Case No. 1-24-042738 in which he was charged with Armed Robbery of Bradley Lewis which occurred on 31 March 2024;
- viii. the Applicant while being concerned with others robbed Bradley Lewis of a burgundy Nissan Note vehicle and cash. Attached and marked as Exhibit “**TB-3**” is a copy of the statement;
- ix. subsequently, on 1 April 2024, at about 12:00 am, Police Inspector P. Percentie and Police Corporal 3879 Brandon Cooper while on patrol received information from the Police Control Room of an Attempted Armed Robbery in the area of Saint Augustine’s College, Prince Charles Drive. After having responded to the information, they arrested the Applicant and others in possession of a firearm and ammunition. Attached and marked as Exhibit “**TB-4**” is a copy of the report of Police Corporal 3879 Cooper;
- x. the Applicant was subsequently interviewed by Detective Constables 4470 Goodman and 4017 Demeritte for the above matters in which the Applicant gave a full signed confession to the various offences. Attached and marked as Exhibit “**TB-5, TB-6, and TB-7**” are copies of the respective Record of Interviews;
- xi. the Applicant is on bail for the offence of Unlawfully Carrying Arms from the Magistrate’s Court;
- xii. the Applicant is not an individual of good character;
- xiii. the evidence as it concerns the Applicant is cogent;

- xiv. the Respondent, based on the Antecedent of the Applicant and the cogency of the evidence for the present offences for which he is presently charged, is of the opinion that there is sufficient evidence to believe that if granted bail, the Applicant would commit further offences;
- xv. based on the evidence, there exists a need to protect the public and public order;
- xvi. should the Applicant be granted bail, there are no conditions that can prevent the Applicant from committing further offences;
- xvii. having regard to all of the above, the Respondent is of the view that bail should be denied; and
- xviii. the Applicant is not a fit and proper candidate for bail at this time.

Issue

11. The salient issue that the Court must consider and determine to render a fair and proper decision in the present application is whether the Applicant is a fit and proper candidate for admission to bail.

Law and Discussion

12. Bail, when granted by the court, permits an accused person charged with a criminal offence to be released from custody on his undertaking to appear for his trial and/or any adjourned dates relative thereto at a specified time and to comply with any conditions, if any, that the court may impose.
13. Bail is derived from the Constitution, Bail Act, Chapter 103 (as amended), and judicial authorities. Bail has its roots in the constitutional tenets that every person is presumed innocent until he pleads guilty or is convicted by a competent court and ought not to have his liberty curtailed except where authority prescribed by law permits such curtailment: **see Articles 20(2)(a) and 19(1) and (3) of the Constitution of The Bahamas.**
14. It is now trite law that the Court has the inherent jurisdiction to grant or deny persons charged with criminal offences (even the most heinous criminal offences) admission to bail. Bail is within the discretion of the Court. Notwithstanding, parliament has provided guidelines, through the Bail Act, Ch. 103 (as amended), for the Court to consider when exercising its discretion on deciding whether to grant or deny an accused person admission to bail.
15. The Applicant stands charged with several offences listed in **Part C of the First Schedule of the Bail Act, Chapter 103 (as amended)**. Therefore, the Court, in determining the present application, must consider **sections 4(2)(2A) and (2B) of the Bail Act, Chapter 103 (as amended)**. These legislative provisions provide as follows –
- “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.
- Part A (First Schedule)**

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

[Emphasis added mine]

16. The Court is also cognizant of the long-established principle in law that an accused person should not be denied admission to bail unless there exist substantial grounds to believe that the accused person, if admitted to bail, would interfere with the witnesses in his case, abscond to avoid facing his accusers in a trial, commit further offences or otherwise seek to pervert the course of justice. An accused person should not be kept in custody *ad infinitum* awaiting his trial. Bail is not to be withheld as a pre-trial punishment and likewise, bail is not to be used as a get-out-of-jail-free-card. Bail is not an exercise in futility. The Court’s consideration and determination for the admission to bail must be approached within the confines of the law and logic: **see Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022.**

17. The burden rests on the Respondent, having regard to the Applicant's fundamental rights and freedoms, to satisfy the Court that the Applicant should not be admitted to bail. This burden is discharged only by sufficient and cogent evidence. Naked, bare, or ritualistic affidavit assertions by the prosecuting authorities without more would not suffice and cannot stand alone: **see 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. An accused person is undoubtedly presumed innocent and ought to be afforded a fair trial within a reasonable time. These tenets are the well-established grundnorms of the Bahamian criminal justice system. However, what amounts to a reasonable time will vary on a case-by-case basis and requires an individual assessment. The Applicant has not been served with any of his VBIs up to the time of the present application; therefore, the consideration of whether the Applicant would be tried within a reasonable time is of no particular concern for the Court at this time.

Seriousness of the offence and likelihood of absconding

19. It is now trite law that the seriousness of the offence, though an important consideration, is not a stand-alone factor warranting an accused person to be denied admission to bail. The seriousness of the offence factor is now coupled with several other factors, namely, the strength and cogency of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding before trial: **see Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019.**
20. The Applicant stands charged with four (4) counts of Armed Robbery, one (1) count of Receiving, one (1) count of Possession of an Unlicensed Firearm, and one (1) count of Possession of Ammunition. Armed Robbery in particular is a profoundly serious offence, particularly given that it usually involves the use of an offensive instrument, to wit, a firearm or firearm apparatus. Crimes against persons and their personal property have exponentially increased in The Bahamas. The Bahamas and the wider Caribbean region continue to grapple with the proliferation of illegal firearms. These illegal firearms have no doubt contributed to the heightened level of criminality in the Bahamian society.
21. Notwithstanding, Armed Robbery is still a bailable offence in accordance with the law as it currently stands. Accused persons charged with Armed Robbery have been routinely admitted to bail, particularly, where the circumstances permit such admission to bail.
22. In the present application, the Respondent has proffered no direct evidence to demonstrate to the Court that the Applicant would be a flight risk or interfere with the witnesses in this case if he is admitted to bail. Instead, the Respondent seeks to rely on the inference of flight inferred on the Applicant given that he is

facing serious charges for which he may be liable to some of the harshest penalties known to law if convicted.

23. Lord Bingham of Cornhill in the Judicial Committee of the Privy Council decision of **Hurnam v The State (Mauritius) [2005] UKPC 49** at paragraph 15 espoused the following –

“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.**”

[Emphasis added mine]

24. The Court, while cognizant of the circumstances of the present application and the inference of flight which may rightfully be inferred on the Applicant, is satisfied that the inference may be weakened and/or minimized with the imposition of appropriate conditions. Such conditions will be further expounded upon below.

Strength and cogency of the evidence

25. The Court has a limited role in bail applications, which is to determine whether sufficient evidence exists to link the Applicant to the commission of the offences for which he is seeking admission to bail. The Court hearing an application for admission to bail is not to weigh up the evidence that may be adduced in a trial. Applications for admission to bail are not forums for mini-trials. Any potential challenges to the evidence tendered are best reserved for trial. The Court's role relative to applications for admission to bail was adeptly summarized by Allen P (as she then was) in **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016** wherein it was pronounced at paragraph 34 as follows –

“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.”

26. The Applicant denies his involvement in the Armed Robbery offences. Irrespective of the advancements by the Respondent, through the Kelly and Bailey Affidavits, neither virtual complainant identified the Applicant as one of the males who robbed them at gunpoint and deprived them of their personal property. The virtual complainant, Kianna Ritchie, identified the Applicant's co-accused, Shavardo Johnson, as the male who was armed with a high-powered firearm, while being concerned with others, that threw her to the ground, took her keys and robbed her of her dark brown 2015 Acura TLX L/P No. AV3888.

27. The principal evidence against the Applicant seeking to be relied upon by the Respondent is a purported confession made by the Applicant to Detective Constable 4470 Deangelo Goodman on 3 April 2024 while he was in police custody and being questioned at the Criminal Investigation Department of the Royal Bahamas Police Force. In this purported confession, the Applicant is alleged to have admitted to playing several roles in the Armed Robbery offences. In one Armed Robbery offence, the Applicant purportedly confessed to being the “lookout man” and in another Armed Robbery offence, the Applicant purportedly confessed to being an active participant. The state of such confession may either fall or stand against any potential legal challenge at trial.
28. The Respondent seeks further to rely on the statement of Inspector Patterson Percentie who reported that he was one of the police officers who arrested and cautioned the Applicant in relation to an Attempted Armed Robbery in the area of Saint Augustine’s College, Prince Charles Drive. Inspector Patterson Percentie reported that while on mobile patrol with Corporal 3879 Brandon Cooper, they received information of an Attempted Armed Robbery in the area of Saint Augustine’s College, Prince Charles Drive. While at that location, they observed two males who were walking out of bushes on the northern side of the road and who jumped over the eastern gate. Inspector Patterson Percentie further reported that he and Corporal 3879 Brandon Cooper exited the vehicle and instructed both males to show their hands and get on the floor. Inspector Patterson Percentie searched the first male who provided his name as Kentrell Cooper and the second male was discovered to be the Applicant. Upon searching the bushes, Inspector Patterson Percentie found a firearm with two magazines. It is to be noted that there is no evidence before the Court that the Applicant has been charged with Attempted Armed Robbery. However, the Applicant does stand charged with Possession of an Unlicensed Firearm and Possession of Ammunition offences.
29. The Court, having regard to its limited role in the present application, is satisfied that the evidence proffered by the Respondent for the present application is capable of linking the Applicant to the criminal offences for which he stands charged to justify the deprivation of his liberty by arrest, charge, and detention.

Interference with witnesses

30. The Court, having regard to the state of the evidence proffered at this time, is not satisfied that there exists any risk of interference with the Respondent’s witnesses in this case. Even if there was a risk of interference with the Respondent’s witnesses by the Applicant, the Court is satisfied that there are sufficient conditions available to minimize the risk.

Character and antecedent

31. The Bahamian Court of Appeal in its decision of **Stephon Godfrey Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2022** highlighted the importance of the character and antecedent factor in applications for admission to bail. Isaacs JA at paragraph 28 stated –

- “28. The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are trivial ...”
32. The Respondent opposed the present application on the ground that there are substantial grounds to believe that the Applicant, if admitted to bail, whether subject to conditions or not, would commit an offence while on bail. The Respondent advanced that the Applicant, whilst released on bail for Unlawfully Carrying Arms in 2020, was subsequently charged with the present offences. Moreover, there are no conditions that the Court can impose to protect the public from the Applicant, and therefore bail ought to be denied. Reliance was placed on the Applicant’s Criminal Records Antecedent Form exhibited to the Bailey Affidavit.
33. On the other hand, the Applicant submitted that apart from the present charges, he has no other pending matters before the Court. The Criminal Record Antecedent Form proffered by the Respondent had not been updated to reflect that he had already spent six (6) months in the Simpson Penn Centre for Boys in relation to the Unlawfully Carrying Arms offence. Moreover, that offence occurred when he was a minor and he has not encountered any other run-ins with the law since his adulthood.
34. The Applicant further submitted that two of his co-accused, namely, Kentrell Cooper and Shavardo Johnson, separately applied for and were admitted to bail in relation to these charges. The Respondent did not oppose those applications for admission to bail. The Court, having received the Applicant’s submissions relative to his co-accused being admitted to bail in relation to these offences and being cognizant that the Applicant is *pro se*, went on inquiry and found that the Applicant’s two co-accused had been admitted to bail in relation to these offences. The Respondent did not oppose those applications for admission to bail. In bail application 2024/CRI/BAL/00079, Kentrell Cooper applied for and was granted emergency bail by the Honourable Madam Justice Joyann Ferguson-Pratt on 15 May 2024 as he was a minor. In bail application 2024/CRI/BAL/00128, Shavardo Johnson applied for and was admitted to bail by the Honourable Madam Justice Renae McKay on 22 August 2024.
35. The Bahamian Court of Appeal in **Jervon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019** provided examples of when the Court could reasonably infer that an accused person applying for admission to bail is a danger to public safety and public order. Crane-Scott JA at paragraph 68 adjudged as follows –
- “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 mine]

36. The Court, while cognizant of the Applicant's somewhat blemished past and having regard to the circumstances of the present application, is not satisfied that the Respondent has proffered sufficient evidence to demonstrate that the Applicant, *inter alia*, poses a threat to public safety and public order or presents the risk of committing a further offence if admitted to bail. In any event, the Court is satisfied that there are appropriate conditions available to the Court to minimize any potential risk should the Applicant be admitted to bail. Such conditions include but are not limited to reporting conditions, curfew, surrendering of passport and/or any travel documents, and the outfitting of an electronic monitoring device.

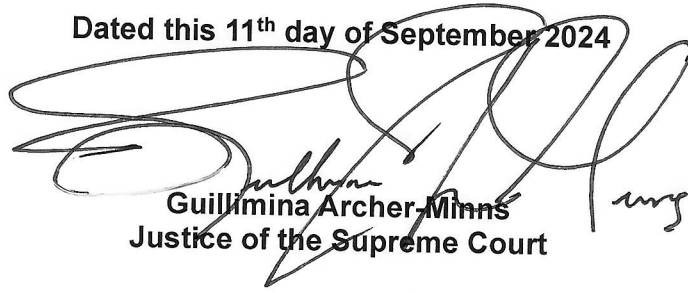
Conclusion

37. The Court, having regard to the foregoing reasons, is satisfied that the Applicant is a fit and proper candidate for admission to bail at this time. The Court, in the exercise of its discretion, hereby accedes to the Applicant's application for admission to bail. The Applicant is admitted to bail subject to the following conditions, that –

- i. bail is to be fixed in the amount of \$15,000.00 with one or two suretors to be approved by the Registrar of the Supreme Court;
- ii. the Applicant is to report to the East Street South Police Station every Monday, Wednesday, and Saturday on or before 7:00 pm;
- iii. the Applicant is to be placed on curfew and must remain at his Butler Street, Nassau Village address between the hours of 8:00 pm to 6:00 am Monday to Sunday until the completion of the matter;
- iv. the Applicant is to be outfitted with an Electronic Monitoring Device and comply with all conditions thereto; and
- v. the Applicant is to appear to the Court on each and every adjourned date until the completion of the matter.

Breach of any of these conditions, the Applicant's bail is subject to being revoked and render him liable to further remand at The Bahamas Department of Correctional Services.

Dated this 11th day of September 2024



Guillimina Archer-Minns
Justice of the Supreme Court