

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**No. CRI/BAIL/2023**

**BETWEEN**

**CORDERO MCDONALD**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Mr. Jeffrey Farquharson for the Applicant

Mr. Timothy Bailey for the Respondent

**RULING- BAIL.**

*Archer-Minns J*

## INTRODUCTION

1. The Applicant, Cordero McDonald (D.O.B. 28<sup>th</sup> September, 1992) (hereinafter referred to as the ("**Applicant**") has been charged with Attempted Murder being concerned with others contrary to section 292 of the Penal Code, Chapter 84, Possession of an Unlicensed Firearm contrary to section 5A of the Firearms Act, (3 counts) and Possession of Ammunition contrary to section 9(2)(a) of the Firearms Act, Chapter 213 ( 2 counts) relative to alleged events of 24 March, 2023 concerning the Virtual Complainant, Theo Williams. The Applicant was previously granted bail by the Court of Appeal in July of 2018 for Attempted Murder (2 counts) and Possession of a Firearm with Intent to Endanger Life and was again granted bail in June 2021. The Applicant has now made application for admission to bail via Summons and Affidavit filed on 13 April, 2023 for the aforementioned charges and the Respondent filed its Affidavit in Response dated 3 May, 2023 in opposition thereto.

## SUBMISSIONS

2. The Applicant's Affidavit essentially asserts that: ( i ) he has no prior convictions; (ii) he has adhered to the terms of his bail conditions; (iii) he was at Comfort Street many blocks away from the alleged incident; (iv) he can provide names of individuals including one wearing an EMD who could speak to his whereabouts at the material time; (v) the questions put to him in his record of interview made it clear that there was some confusion as to the location where the alleged vehicle used in the commission of the offence was abandoned; (vi) the vehicle was rented and a female named Donny Smith was arrested in connection with the rental and that he was not one of the four males she said she rented the car to; (vii) officers have made several attempts to locate these individuals with one said to be in custody and (viii) the evidence against him is inherently weak and that he would abide by any and all conditions imposed by the court if granted bail.
3. The Applicant's Counsel orally contended that; (i) the officer allegedly saw the individual around 10:20p.m in the dark of night which amounts to a fleeting glance and does not make this evidence cogent nor does following a vehicle allow for proper identification of the individual therein; (ii) the officer was shown a photo of the Applicant and did not attend an identification parade and (iii) where the Respondent speaks to the severity of the penalty as an incentive for the Applicant to abscond, the safety of witnesses and there being no conditions which could be imposed to minimize the risks involved are all bare assertions with no evidence adduced to support same. Reliance was placed on *Dennis Mather v DPP (SCCrApp. No. 96 of 2020)*.

4. The Respondent's Affidavit provides inter alia that: (i) the Applicant has a series of pending matters including Attempted Murder and Possession of a Firearm with Intent to Endanger Life with a set trial date of 6 November, 2023; (ii) in relation to the subject charges, the evidence is cogent and reliance placed on the evidence of Police Sargent 3358 Alcott Forbes who witnessed the incident and followed the assailants thereafter allowing him to observe the license plate number of the vehicle, clothing description and the driver of the vehicle who is known to him from the area as the Applicant in this matter; (iii) Sargent Forbes also identified the Applicant via a 12 man photo lineup and same exhibited (iv) the offences for which the Applicant is before the court involved the use of a firearm and are of a serious nature and there is a concern for public safety; (v) the severity of the penalty for such offences upon conviction provides a sufficient incentive for the Applicant to abscond and commit other offences while on bail; (vi) the Applicant has demonstrated through his conduct that there are no conditions that can be imposed to prevent the Applicant from reoffending and (vii) there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified nor has there been any unreasonable delay in the prosecution of the matter.
5. By oral submissions, Counsel for the Respondent contended that the Applicant was on bail when he was subsequently charged with these present offences. Further, Officer Forbes knew the Applicant from the area which helped him in identifying the Applicant from a 12 man photo gallery and not a single photo as was suggested by the Applicant's counsel.

#### THE LAW

6. By virtue of the Constitution of the Bahamas, all persons charged with a criminal offence are cloaked with a presumption of innocence and have an unalienable right to make application for bail. **The Bail Act (1994)** gives judicial officers the discretionary power to determine whether an Applicant should be granted bail or not. Sections 4(2), 4(2A), 4(2B) and the First Schedule of the Act which concern Part C Offences including the offence of Attempted Murder were considered by the court.

#### DISCUSSION

7. The first consideration was whether this matter will be tried within a reasonable period of time ie within three (3) years from the date the Applicant was charged (Section 4(2A)). The alleged offences occurred in March of this year and as such there is currently no issue in relation to the Applicant being tried within a

reasonable time. The Applicant it is noted is scheduled for trial within a few months - 6 November 2023 in respect of his pending matters for 2016.

8. The Respondent advanced that the Applicant in the interest of public safety should not be granted bail. As part of its deliberation of this application, the Court had regard to the character/antecedent of the Applicant and the need to protect the safety of the public, public order and where appropriate the need to protect the safety of the victim. This Applicant has pending charges of Attempted Murder and Possession of an Unlicensed Firearm With Intent To Endanger Life and is currently charged with Attempted Murder and three (3 counts) of Possession of an Unlicensed Firearm, all serious offences which include an element of violence. And; the Applicant was on bail at the time of the commission of the current offences. Considering **Jevon Seymour v DPP No. 115 of 2019**, the CA stated therein:

*“ 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 the 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:”*

9. In the case of **Tyreke Mallory v DPP (SCCrApp. No. 142 of 2021)**, it was also stated at paragraphs 23 to 25 that

*“Unlike in **Stephon Davis** the evidence against the appellant is cogent and cannot be said to be very weak or non-existent. The contents of the reports as exhibited to the Affidavit of Sergeant 2169 Pinder sets out what can only be described as a strong prima facie case. This supports the findings by the trial judge that there is a reasonable basis for the Crown’s allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail. 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. 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.”*

10. In **Stephon Davis v. The Director of Public Prosecutions (SCCrApp. No. 108 of 2021)**, *the Court of Appeal expounded* that *“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."

11. Also of consideration was the 2017 Court of Appeal ruling concerning this Applicant wherein the court stated,

*".....there is the other factor that the appellant was on bail when charged with an offence similar to that in respect of which he was already released on bail. The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice".* **(Cordero McDonald v The A.G. SCCrApp. No. 195 of 2016).**

12. This Court also took into consideration the Applicant's propensity to commit other offences while on Bail, failure to surrender to custody/trial or obstruct the course of justice. Clearly from the evidence adduced, this Applicant was on bail at the time of the commission of the current alleged offences, similar in nature to those for which he was on bail and which are regarded as being serious in nature.

13. The Court during its deliberation also had regard to the evidence which was adduced before it upon which the Respondent intends to rely at trial particularly the evidence of Sargent 3358 Alcott Forbes. On the evidence adduced, the Court is of the view that the same 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 as enunciated in McDonald 2017 supra.

14. Also considered were conditions that could be imposed that would minimize the risks involved should bail be granted. The Court took note that bail conditions inclusive of reporting conditions and the outfitting of an electronic monitoring device were previously imposed upon the Applicant notwithstanding, the Applicant has found himself charged with similar offences. Therefore, the court is of the view that there are no conditions which can effectively be imposed that would minimize the risk involved with the likelihood of the Applicant committing other offences.

## Conclusion

15. The Constitution of The Bahamas and the relevant provisions of the Bail Act having been considered together with the Affidavits of both counsel and their respective submissions, this Court so finds that unreasonable delay is not an issue in this matter and therefore gave consideration to the following factors:

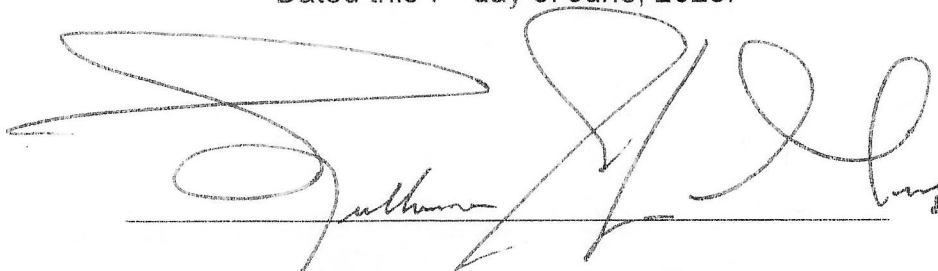
- i. the strength of the evidence against the Applicant;
- ii. pending matters concerning the Applicant;
- iii. the competing interest of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;
- iv. the Applicant previously being granted bail and now charged with similar offences;
- v. the seriousness of the offences charged and;
- vi. bail conditions which could be imposed to minimize the risks involved with granting bail.

16. The Applicant was initially denied bail but was subsequently granted bail by the Court of Appeal for offences of Attempted Murder and Possession of an Unlicensed Firearm with Intent to Endanger Life. The Applicant finds himself before the court once again charged with like offences all of which are serious offences involving the use of a firearm which more often than not result in dangerous harm and in certain circumstances, death. The Court is of the view that there is sufficient evidence as to the Applicant's involvement in the offences for which he has been charged and whilst on bail for like offense. If granted bail, it is the Court's further view that the Applicant would likely commit other offences and pose a heightened risk to public safety and security as well as potential prosecution witnesses.

All aforementioned factors having been considered, the Court will not exercise its discretion to grant the Applicant bail at this time. Bail is denied.

Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 7<sup>th</sup> day of June, 2023.



A handwritten signature in black ink, appearing to be 'Guthrie', written over a horizontal line. The signature is stylized and cursive.