

IN THE SUPREME COURT

Criminal Division

Between

GLENROY BROWN

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns
Appearances: Ms. Cassie Bethell for the Applicant
Ms. Davina Pinder for the Respondent
Hearing Date: 30 November 2023

RULING

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Application for 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) – Whether the applicant is a fit and proper candidate for the granting of bail – Application for bail granted – Stringent conditions imposed

INTRODUCTION

1. The Applicant is a 21-year-old Bahamian male charged with the following offences:-
 - i. Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84 of the Statute Laws of the Commonwealth of The Bahamas; and
 - ii. Receiving contrary to section 358 of the Penal Code, Chapter 84 of the Statute Laws of the Commonwealth of The Bahamas.
2. The Applicant was remanded to The Bahamas Department of Corrections. It is alleged that the Applicant, on Thursday 2 June 2022 while at New Providence, did the following:-
 - a. being armed with an offensive instrument, to wit a firearm, robbed Yasmin Strachan of a 2022 Charcoal Grey Honda CR-V License Plate Number AC4292, two (2) Samsung cell phones, and \$780.00 cash, the property of Yasmin Strachan; and
 - b. dishonestly received \$780.00, the property of Yasmin Strachan, knowing the same to have been obtained or appropriated by an offence.

3. The Applicant made this application by way of a Summons filed on 28 July 2023 which was supported by an Affidavit and Supplemental Affidavit sworn by the Applicant filed on 28 July 2023 and 28 November 2023, respectively.
4. The Respondent opposed the application by way of an Affidavit-In-Response sworn by Ms. Shaneka Carey, Counsel and Attorney employed with the Respondent's Office, filed on 5 September 2023.
5. The Court has read the Affidavits of the Applicant and Respondent and has heard the submissions.
6. The Applicant applied for bail on the following grounds, that:-
 - i. he is a citizen of the Commonwealth of The Bahamas;
 - ii. he pleaded not guilty and will defend the charges at trial;
 - iii. he does not have any previous conviction(s) before the Court(s) in the Commonwealth of The Bahamas;
 - iv. he has a pending matter before the Court(s) in the Commonwealth of The Bahamas for Stealing and Housebreaking;
 - v. prior to his incarceration, he was employed at Do It All Construction Company;
 - vi. should the Court admit him to bail, he will have accommodations;
 - vii. he respectfully requests that the Court admit him to bail pending his further Court appearances and for the following other reasons:-
 - (a) he will be disadvantaged in his ability to prepare his defence; and
 - (b) he will be disadvantaged in his ability to support his infant daughter, himself, and his family;
 - viii. if 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.
7. The Respondent opposed the application on the following grounds, that:-
 - i. the nature and seriousness of the offences and the nature and strength of the evidence against the Applicant is such that there is a need to protect the safety of the public or public order;
 - ii. the Applicant does have a pending matter before Magistrate Kendra Kelly, Court #10, for Stealing and Housebreaking (Case# 1-22-024069);
 - iii. the Applicant was granted bail for the said matter on 1 March 2022 in the amount of \$3,000.00 with one or two suretors, ordered to sign in at the Grove Police Station every Friday on or before 6 pm and fitted with an electronic monitoring device (EMD);
 - iv. the commission of the present offences occurred on 2 June 2022 while the Applicant was fitted with an EMD, therefore, he having committed the said offences while on bail;
 - v. the Applicant's trial before Magistrate's Court #10 was set for 2 May 2022; however, when the matter was called up the Applicant was not present, and therefore a warrant of arrest was issued and is still outstanding;
 - vi. the Applicant's non-appearance for trial before Magistrate Court #10 shows that he will more than likely not appear for trial if granted bail;
 - vii. the Applicant will more than likely not abide by any conditions put in place by the Court if granted bail given his failure of complying with his previous bail conditions and that he has the propensity to commit further similar offences if granted bail;
 - viii. although there are pending matters, the Court can still take them into consideration, including the similarity with the offences; and

- ix. there is nothing peculiar about the Applicant's situation which suggests that his continued detention is unjustified.
8. The Applicant further responded to the Respondent's opposition to his application for bail on the following grounds, that:-
- i. he made a mistake in failing to appear on 2 May 2022 and appeared on the following day, 3 May 2022, at which time he was advised that his matter was not on the list for that day;
 - ii. nevertheless, he remained at the court until the completion of the matters that were on the court's schedule, and when called in he explained to the Magistrate in the presence of the prosecutor the mistake he made;
 - iii. he was advised by the Magistrate that the warrant of arrest issued on the previous day would be cancelled and he was given an adjourned date to return on 17 June 2022;
 - iv. he was arrested for the matter which is the subject of the present application and he was never returned to the Magistrate's Court;
 - v. in relation to the Criminal Record Antecedent Form produced by the Respondent, a Nolle Prosequi was entered in respect of the Armed Robbery charge (Police Case No. 1-19-048993);
 - vi. in relation to the Possession of Dangerous Drugs with Intent to Supply matter (Police Case No. 1-19-036921) which appears on his Criminal Record Antecedent Form, he successfully completed the condition imposed by the Magistrate, which was to attend a drug counselling programme conducted by one Mr. Fox and he submitted a certificate of completion to the Court evidencing same; therefore, the matter is completed and the purported warrant of arrest that appears on the said Antecedent Form is an error; and
 - vii. in all of the circumstances, he is a fit and proper candidate for bail and humbly requests that the Court accede to his application to have bail relative to Armed Robbery and Receiving; granted.

ISSUE

9. The issue that the Court must decide is: whether the Applicant is a fit and proper candidate for bail?

LAW AND DISCUSSION

10. Bail refers to the right of a person charged with a criminal offence to be released from custody subject to his undertaking to appear for his trial at the requisite time and comply with any condition that the Court may think fit and just to impose.
11. The grant or refusal of bail is a judicial function exercised by the Court. It is the Court that is seized with the ultimate discretion of deciding whether a person charged with a criminal offence ought to be granted or refused bail. By virtue of the Bail Act (as amended) general guidelines have been outlined therein which the Court may consider when deciding whether to grant or refuse bail: **The Attorney General v Bradley Ferguson, Kermit Evans, Stephen Stubbs and Kenton Deon Knowles Appeals Nos. 57, 106, 108, 116 of 2008 (A.G. v Bradley Ferguson)**

12. In determining the appropriate decision in this application, the Court reviewed the various provisions of the Constitution of The Bahamas, Bail Act (as amended), and recent authorities.

13. **Article 20 of the Constitution** affords every person charged with a criminal offence the presumption of innocence until he or she is found guilty or pleads to his or her guilt. It 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** affords every person the right to personal liberty save for certain circumstances in which his or her liberty may be lawfully deprived. These provisions read as follows –

“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. With respect to the Court’s discretion to grant or refuse bail for an accused person in criminal proceedings who is charged with a Part C offence, for which Armed Robbery is included, **section 4 (2) (2A) and (2B) of the Bail Act, Chapter 103 (as amended)** sets out the factors that should be considered. It states 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.”

(Emphasis added)

16. Part A of the First Schedule (insofar as relevant to this application) provides:-

“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 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. The Court is cognizant 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 permitted to bail. Bail is not to be withheld as a punishment.

18. The Court of Appeal in **Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019** provided guidance on the operation of the Bail Act (as amended) having regard to its provisions and relevant principles enunciated in recent authorities. Evans JA at paragraph 11 stated as follows:-

“11. When an accused person makes an application for bail in relation to a Part C Offence the Court must consider the matters set out in Section 4(2) (a) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time he can be admitted to bail (as per (a)). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c) i.e., “all the relevant factors”, including those in Part A of the First Schedule and the “primary considerations” in Section 4 (2B). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail. “

19. In bail applications, the onus rests on the Respondent, having regard to the Applicant's rights to the presumption of innocence and liberty as afforded by the Constitution, to satisfy the Court that he ought not be granted bail. The Respondent discharges this onus by the production of evidence. Naked statements or bare assertions would not suffice. The law requires nothing more and nothing less: **Johnathan Ambrister v The Attorney General SCCrApp No.145 of 2011**

20. In **Jeremiah Andrews (supra)**, Evans JA at paragraph 26 opined as follows –

“In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act section 4(2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence.”

Seriousness of the offence and likelihood of absconding

21. Historically, the Courts have firmly held that the seriousness of the offence, though an important consideration, is not a free-standing ground for the refusal of a bail application. The seriousness of the offence factor is coupled with several other 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 this regard, reliance is placed on the dicta of Evans JA in **Jeremiah Andrews (supra)**. His Lordship at paragraph 30 opined –

“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.”

22. The Applicant is charged with Armed Robbery and Receiving. It would be unconscionable to go against sound reasoning to suggest that Armed Robbery is not a serious offence. The proliferation of illegal firearms and use of illegal firearms for illicit activities around the world, particularly in small island states such as The Bahamas and the wider Caribbean region have no doubt raised grave concern for public safety and public order. Notwithstanding that Armed Robbery is a serious offence, it is aailable offence. Bail is not to be withheld as a punishment and should only be so withheld where there is evidence produced to justify the Applicant's pre-trial detention.

23. In the present application, evidence was adduced by the Respondent that the Applicant, while previously on bail for Stealing and Housebreaking, did not appear for his trial at Magistrate Court No.10 on 2 May 2022 in relation to that matter and a warrant of arrest was issued for him. This indicates a proclivity that the Applicant will more than likely not appear for trial if granted bail again. On the other hand, evidence was adduced by the Applicant that he made a mistake in failing to appear to court on 2 May 2022 and appeared on the following day, 3 May 2022 at which time he was advised that his matter was not

on the list for that day. Nevertheless, the Applicant remained at the court until the completion of the matters that were on the court's schedule and when called upon he explained to the Magistrate in the presence of the Prosecutor the mistake he made. Evidence was further adduced by the Applicant that he was advised by the Magistrate that the warrant of arrest issued on the previous day was cancelled and he was given an adjourned date to return to court on 17 June 2022. However, he was arrested for the matter which is the subject of the present application and he was never returned to the Magistrate's Court.

24. The Court is satisfied, having regard to the evidence adduced by the Respondent and Applicant, that the Applicant's non-appearance at Magistrate Court No.10 on 2 May 2022 was a reasonable oversight and not an indication of his likelihood to abscond or not appear at trial. Even if the Court was minded to conclude that the Applicant's non-appearance at trial on 2 May 2022 indicated a likelihood to abscond and not appear at trial, the Applicant's subsequent appearance to Court on 3 May 2022 purged the Court's mind of such likelihood.

25. However, it may be reasonably inferred that provided the seriousness of the offences for which the Applicant is charged, and the penalty likely to be imposed upon conviction, the Applicant may be tempted to abscond before trial. The Applicant is charged with a serious offence, namely, Armed Robbery. Additionally, the Applicant is charged with Receiving. If the Applicant is convicted, he may likely receive a lengthy sentence.

26. 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.”

27. The Court is not satisfied that the inference may be weakened by the Applicant's bare or naked assertions that his continued incarceration will disadvantage his ability to adequately prepare his defence or ability to support his infant daughter, himself, or assist his family. In fact, the inference may be strengthened by other factors.

Strength and cogency of the evidence

28. The Applicant maintains his innocence and indicates his willingness to defend the charges at trial. On the other hand, the Respondent exhibited to its Affidavit a witness statement from the virtual complainant, Yasmine Strachan, who identified the Applicant as the male who robbed her at gunpoint of her 2022 Honda CR-V, two Samsung cell phones, and \$780.00. The virtual complainant subsequently identified the Applicant as the male who robbed her at gunpoint from a photo gallery. The Respondent further exhibited to its Affidavit two reports from Corporal 3753 Oliver and Police Constable 4037 Wallace, respectively, indicating that the Applicant was arrested some thirty minutes after

the alleged offences were committed. The officers relied on the assistance of the virtual complainant's tracking device on one of her cell phones that was stolen and the description given by her of the suspect's clothing and likeness. However, the Court is mindful of its role in bail applications. In this regard, the court relies on the dicta of Allen P, at paragraph 34, in the Court of Appeal decision of **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016**, which states 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."

29. The Court is satisfied that the evidence adduced in the witness statement by the virtual complainant and the reports from Corporal 3753 Oliver and Police Constable 4037 Wallace exhibited to the Respondent's Affidavit is strong and cogent and capable of raising a reasonable suspicion of the Applicant's involvement in the offences.

Character and antecedent

30. The Respondent further advanced that the nature and seriousness of these offences and strength of the evidence against the Applicant are such that there is a need to protect the safety of the public or public order. The Applicant was previously on bail for Stealing and Housebreaking when he allegedly committed the offences in relation to this present application, which shows that the Applicant has shown a propensity to commit offences while on bail and will more than likely not abide by any conditions imposed by the Court if granted bail. However, the Applicant, through his Counsel, submitted that the Applicant's charge for Stealing and Housebreaking stem from the same facts in relation to a previous charge of Armed Robbery which offences were nollied. Regrettably, the Respondent did not assist the Court by attaching to its Affidavit the Applicant's Criminal Record Antecedent Form nor did they otherwise challenge the evidence of the Applicant. The Court can only make a determination based on the evidence adduced before it.

31. With reference to the Applicant's character and antecedent, the Court relies on the Court of Appeal decision of **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp No. 29 of 2020** where that Court at paragraphs 19-21 stated as follows –

"19. As to the antecedents, it is not required to show that the appellant lives a habitual life of crime before taking his antecedent into account.

20. In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.

21. In our view, it was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail."

32. The Court further relies on the Court of Appeal decision of **Tyreke Mallory v The Director of Public Prosecutions SCCrApp No. 142 of 2021**. In that case, the appellant had multiple previous convictions and was on bail for Armed Robbery when he was charged with the offence of murder. Evans JA at paragraphs 24-25 stated as follows –

“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. With reference to the Respondent’s assertions that the Applicant’s alleged committal of the present offences while previously on bail demonstrates his propensity not to comply with any conditions imposed by the Court or commit further offences (whether of a similar nature or not), the Court relies on the Court of Appeal decision of **Dennis Mather v Director of Public Prosecutions SCCrApp No. 96 of 2020**. In this case, Isaacs JA, at paragraph 49, stated as follows –

“49. ...The fact that a person has been charged with one offence while he stands accused of having committed an earlier offence cannot provide support for the conclusion that a propensity to commit offences has been disclosed the person be admitted to bail particularly after the person has been discharged on the earlier offence.”

34. The Applicant has no previous conviction(s) before the Court(s) in the Commonwealth of The Bahamas. The Applicant advanced that he appeared before the Magistrate’s Court in Police Case No. 1-19-036921 concerning a matter for Possession of Dangerous Drugs with Intent to Supply. The Applicant further advanced that he was given a conditional discharge provided he attended and successfully completed a drug counselling programme with Mr. Fox, which he did.

35. The Applicant has no previous convictions and the Respondent has not produced any evidence to indicate that the Applicant is a threat to public safety, public order, or potential witnesses. The Court is not satisfied that the Applicant is likely to commit further offences (whether of a similar nature or otherwise) or that there is a need to protect the public or public order.

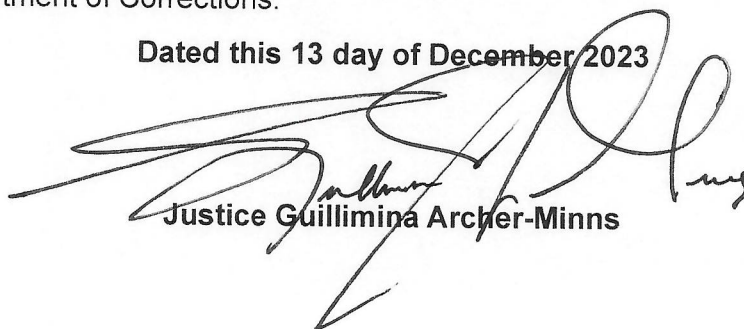
CONCLUSION

36. The Court is cognizant that the imposition of conditions may address the Court’s concerns of whether or not to grant the Applicant bail. The Applicant has prayed that should he be granted bail; he will comply with all rules and regulations set out by the Court. The conditions usually employed by the Court include reporting, electronic monitoring device, curfew, etc.

37. The Court, having found that it is not satisfied that the Applicant would likely commit further offences (whether of a similar nature or otherwise) or that there is a need to protect the public or public order, the latter conditions are satisfactory to mitigate the Court's concerns about securing the Applicant's attendance at trial or minimizes any risks involved with the granting of bail.
38. In the circumstances and having regard to the foregoing reasons, the Court finds that the Applicant is a fit and proper candidate for bail. The Court grants bail subject to the following conditions, that:-
- i. bail is to be fixed in the amount of \$10,000.00 with one or two suretors to be approved by the Registrar;
 - ii. the Applicant is to report to the Grove Police Station every Monday, Wednesday, and Saturday on or before 6:00 pm;
 - iii. the Applicant is to surrender his passport and/or all travel documents to the Court;
 - iv. the Applicant is to be outfitted with an Electronic Monitoring Device and comply with all conditions thereto;
 - v. the Applicant is to be placed on curfew in which the Applicant must remain at his registered address between the hours of 9:00 pm to 5:00 am Monday to Sunday; and
 - vi. the Applicant is to appear to 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 will render him liable to further remand at The Bahamas Department of Corrections.

Dated this 13 day of December 2023



Justice Guillimina Archer-Minns