

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

2013/CRI/BAIL/FP/00293

B E T W E E N

TREVOR RECKLEY

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Andrew Forbes

**Appearances: Attorney Mrs. Ashley Carroll and Mr. Sean Norvell Smith; c/o
Director of Public Prosecutions**

Attorney Mr. Packo Deal c/o Applicant

Hearing Date: 12th December, 2024

DECISION ON BAIL

FORBES, J

INTRODUCTION

[1.] This Application is for the admittance of bail made by way of Summons and an Affidavit in Support filed on the 1st November, 2024.

[2.] On the 15th November, 2024 and 6th December, 2024, the Respondent filed an Affidavit in Response and a Supplemental Affidavit of Corporal Harris Cash in opposition of bail respectively.

AFFIDAVIT EVIDENCE

[3.] This Applicant is a Bahamian male citizen. He is 33 years old having been born on the 1st September, 1991.

[4.] The Applicant is charged with the following offences:
a. Wantonly Discharging a Firearm contrary to section 37 of the Firearms Act, Chapter 213; and
b. Possession of a Firearm with Intent to Put Another In Fear contrary to section 34(1) of the Firearms Act, Chapter 213.

[5.] The Applicant was arraigned and remanded to the Bahamas Department of Correctional Services on the 28th October, 2024 before Senior Magistrate LaQuay Laing.

[6.] The Applicant's next scheduled appearance is before Senior Magistrate LaQuay Laing to begin his trial on the 21st February, 2025.

[7.] The Applicant asserts his innocence; further states that he has no previous breaches of bail and he is willing to comply with any condition the Court imposes.

[8.] The Applicant has two matters before the Supreme Court for the charges of Murder and Attempted Murder.

[9.] The Applicant, prior to being detained, was employed at Celebration Cay (Carnival Cruise Port) in the capacity as a mason.

[10.] The Applicant has no intention of absconding. Further, that he is close to his relatives and resides with his fiancé who is pregnant with his child.

[11.] The Crown opposes this application and relies on the Affidavit of Corporal 3913 Harris Cash of the Royal Bahamas Police Force. Corporal 3913 Cash stated that there is cogent evidence against the Applicant to which he exhibited the docket and antecedents of the Applicant, reports of Police Sergeant 2955 Mario Rahming, Detective Sergeant 3429 Renardo Curtiss and statement of Kendal Poiter, the Virtual Complainant. Corporal Cash stated that the Applicant has an extensive criminal history and some of the offences are similar in nature. Moreover, that there is no unreasonable delay. Further, he stated that the Respondent is objecting to the bail application due to the serious nature of the offence, the strength of the evidence; that the Applicant was on bail while being arrested for an offence of a similar nature and that there is a strong likelihood that the Applicant would interfere with the victim due to the proximity of the Applicant's mother's residence and the Virtual Complainant. The Court notes that there was an error on the face of the Affidavit as the deponent states that the Applicant plead guilty to Count one of his charges and at his hearing this was denied. The Crown sought to amend on its feet and the Court accepted.

[12.] Kendal Stephen Poiter stated that he went to his neighbour's home to purchase snacks for his children. While there he saw three males whom he only knew "by face". After he knocked on the door, he stated that while at the residence he sat and waited to be attended to. He said that after waiting for a few seconds one of the three men there said "Gun man" and that a man he only knew as "Mookie" approached him brandishing a firearm spoke to him. That Mookie was in clear view, there was no obstructions between them and the area was well lit. He described the gun as black and a short machine gun. That Mookie then walked across the road and he heard loud noises that sounded like gunshots. In a further statement, Mr. Poitier stated that officers showed him a paper with 12 male photos on it and that he identified the person at number 10 as Mookie who fired two gunshots and put him in fear of his life. He circled the photograph, initialled and dated the document.

[13.] Detective Sergeant 3429 Curtiss stated that on Sunday 27th October, 2023 while on duty at the Criminal Investigation Department, he saw and spoke with Detective Inspector K. Smith who gave him certain information with relation to Trevor Reckley and gave him a 12 man photo lineup along with a legend. That later that day he saw and spoke with Kendal Poitier and showed him the lineup, informed Mr. Poitier that the person responsible for the incident may or may not be in the line-up to which Mr. Poitier identified number 10 as the person. That Mr. Poitier circled the photo and initialled and dated the lineup for future identification.

[14.] Police Sergeant 2955 Mario Rahming in his report stated that on Friday 25th October, 2024 at about 1:00 pm he received information from Criminal Investigation Department Station, Grand Bahama regarding this matter. That at about 1:35 pm he proceeded to Frobisher Drive and saw and spoke to Carl Ferguson who directed him to a surveillance system located in the eastern room at the location. That the time and date was correct and he extracted the surveillance footage for the 23/10/2024 between 12:57 pm and 1:00 pm from the surveillance

labelled driveway. That on the 26th October, 2024 while on duty at the Criminal Investigation Department, Grand Bahama he received certain information from Detective Inspector Smith with reference to Trevor Reckley. As a result, he compiled a photographic lineup of 12 persons with similar features and characteristics, inclusive of Trevor Reckley and made corresponding legends indicating each person's location in the lineup and handed over the lineup and legend to Detective Inspector Smith for further investigations. That on the same day he extracted an interview of Trevor Reckley D.O.B. 09/01/91 Red Yard, Hunters in the police interview. Present in the interview was Detective Corporal 3781 Cooper and Detective Corporal 4530 Poiter conducted on the 25/10/2024 between 11:54 am and 12:40 pm. That he placed the extractions on dvds and printed the police lineup with his office computer that was in good working order, he then placed his initials with his police number on the DVDs and printed copies for identification and handed them over to the investigator.

SUBMISSIONS

[15.] Mr. Packo Deal, Counsel for the Applicant submits, in part, that:

- a. Every person accused of an offence is innocent until proven guilty or as plead guilty pursuant to the Constitution of The Bahamas;
- b. That when considering whether to grant bail, the test to be applied is whether the Applicant will appear at trial and whether the public interest is at risk (see **Hubbard v Police**);
- c. That section 3(2), (2A), (2B) and section 4 laid out the relevant factors in the Bail (Amendment) Act 2011.;
- d. That it is not disputed that the charges are serious and that the strength of the evidence may add to the weight of the prosecution's argument that the Applicant may abscond, the seriousness of an offence in itself is not a ground for refusal (see **Hurnam v The State (Mauritius); Commissioner of Police v Beneby**);
- e. That by the prosecution "disclosing" surveillance footage but not adducing it to the court amounts to an abuse of process and ought not to be relied on.
- f. That reliance of pending matters is not sufficient to substantiate an objection to bail and ought not to have any bearing as they create a perception of prejudice on behalf of the Crown (see **Dennis Mather v DPP SCCrApp** No. 96 of 2020);
- g. That Reckley has not breached any bail conditions and that there is no evidence that he will interfere with witnesses, nor obstruct the course of justice.

[16.] Mrs. Ashley Carroll, Counsel for the Respondent submits, in part, that:

- a. That the primary purpose of detention of an accused charged with an offence is to ensure his attendance at trial; however, the Court is mandated to take into consideration whether, if released, the accused would interfere with witnesses (see **Johnathan Armbrister v The Attorney General SCCrApp** No. 145 of 2011);
- b. That at the time of this offence the Applicant was on bail for 2 very serious offences and that if released on bail he will commit further crimes;
- c. That the a judge cannot simply refuse an application for bail merely because he is alleged to have committed a new similar offence while on bail; however, the

crown has a duty to put before the court the evidence which raises a reasonable suspicion of the commission of the offences to deprive the Applicant of his liberty (see **Stephon Davis v DPP** SCCrApp. 108 of 2021);

- d. That the judge is only required to evaluate whether the witness statements show a case that is plausible on its face of establishing the guilt of the appellant (see **Donovan Collie v DPP** SCCrApp. 132 of 2023); and
- e. That there are no conditions that can be put in place to mitigate the concerns that the Applicant will commit another offence as he was on bail with very stringent conditions.

ISSUE

[17.] The issue for the Court to determine is whether the Applicant is a fit and proper person for bail pursuant to Section 4 of the Bail (Amendment) Act, 2011 (“the Act”).

LAW

[18.] The Applicant has the constitutional right to be presumed innocent of the charges in the Voluntary Bill of Indictment. Specifically, Article 20 (2)(a) of the Constitution of The Bahamas states:

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

The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the Applicant and the community. The rights and the safety of the Applicant and the safety of the public have to be weighed. The facts and circumstances of each case are different and needs an individual assessment. Every fresh bail application must be considered anew.

[19.] The Bail Act Section 4(2) provides:

“4(2) Notwithstanding any other provisions of the Act or any other law, any person charged with a Part C offence 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) should be granted bail having regard to all the relevant factors, including those specified in Part A of the First Schedule and the “primary considerations” set out in subsection (2B).”**

[20.] Subsection 4(2)(A) accordingly provides:

(2A) For the purpose of subsection 2(a)....

- (a) Without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;**
- (b) Delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.”**

[21.] This matter is set for trial in the Magistrate Court on 21st February, 2025. Therefore, the Court must go on to consider the other statutory factors to be taken into account when

considering the grant of discretionary bail set out in Part A of the First Schedule to the Act which provides as follows:

In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

- (a) whether there are substantial grounds for believing that the defendant, if released on bail, would-
 - (i) fail to surrender to custody or appear at his trial;**
 - (ii) commit an offence while on bail; or**
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;****
- (b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**
- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;**
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;**
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;**
- (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;**
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."**

[Emphasis mine]

[22.] The Court must also have regard to the primary considerations of section 4 (2)(B) of the Act which provides as follows:-

“(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 of primary considerations.”

[Emphasis mine]

[23.] The burden is on the Crown to satisfy the Court that the Applicant ought not be granted bail and the standard of proof is on the balance of probabilities.

[24.] The Court must consider the nature and seriousness of the offence. Possession of such firearm coupled with discharging that firearm is sufficiently serious as the Applicant may face harsh penalties if found guilty. However, a bail hearing is not the forum for conducting a mini-trial. In the case of **Jonathan Armbrister v A.G.** SCCrim. App. No. 145 of 2011 *John, JA* states at paragraph 13:

“13. The seriousness of the offence with which the accused is charged and the penalty which is likely to entail upon conviction, has always been and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of

murder and other serious offences, the seriousness of the offence should invariably weigh heavily on the scale against the grant of bail."

[Emphasis mine]

The nature and seriousness of an offence does weigh heavily against the Applicant with relation to the grant of bail. However, the case of **Hurnam v. The State** (Privy Council Appeal No.53 of 2004) as applied in **Stephon Davis v. The Director of Public Prosecutions** SCCrApp No. 108 of 2021 states as follows: -

16. Lord Bingham of Cornhill stated, inter alia, at paragraph 15 of *Hurnam v The State* (Mauritius) [2005] UKPC 49, as follows:

"[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 drugs 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."

17. Lord Bingham went on to say, inter alia, at paragraph [16]:

"The European Court has, realistically, recognised that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see, for example, *Ilijkov v Bulgaria* (Application no 33977/96, 26 July 2001, unreported)), para 80, but has consistently insisted that the seriousness of the crime alleged, and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..."

[25.] Further, the Court takes note of the comments of the Court of Appeal in *Davis supra* noting, in particular, the statements made in the headnote by the President of Appeal Sir Michael Barnett and Justice of Appeal Evans where they commented as follows:

per Evans, JA: A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity....

per Barnett, P: This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of

bail to show why there are good reasons to deny bail to a person charged with an offence.”

[Emphasis added.]

[26.] The primary consideration whether to grant bail is whether the person will make himself available for trial and any other court dates mandated by this Court. This consideration cannot be answered in the negative simply because the person is charged with a serious offence.

[27.] The Court must also consider whether there are conditions which can be put in place to ensure the Applicant’s attendance at trial, ameliorate or eliminate any perceived risk of absconding or witness interference (**Jevon Seymour v The Director of Public Prosecutions** SCCrApp. No. 115 of 2019.)

DISPOSITION

[28.] In considering all the circumstances relevant to this hearing. The Court finds that the Respondent has satisfied me that this applicant ought not be granted bail pending his trial and I hereby do not exercise this Court’s discretion and deny bail for the following reasons:

- a. Wantonly Discharging a Firearm contrary to section 37 of the Firearms Act, Chapter 213; and Possession of a Firearm with Intent to Put Another In Fear contrary to section 34(1) of the Firearms Act, Chapter 213 are serious. There is strong evidence against the Applicant advanced by the Crown based on the statements and reports presented in this bail hearing, in that there is identification evidence and surveillance footage of the alleged incident. However, this evidence must be vetted at trial not in a bail application. At this point the Court only has before it reports by the witnesses and the Applicant maintains his innocence and it is in this Court’s view strong and cogent. The seriousness of this charge and *prima facie* evidence advanced by the Crown weigh heavily on the scale against the grant of bail but there are other factors that the Court must consider.
- b. There has been no unreasonable delay thus far as the Applicant’s trial is set for 21st February, 2025.
- c. There is no evidence before the court to suggest that he might abscond. However, there is evidence before the Court that he will interfere with the witnesses. The Crown relied upon the proximity of the Applicant’s Mother’s home and the Virtual Complainant; however, it was the oral evidence of the Applicant at his hearing that demonstrated this point. The Defendant, who has been in custody from his arrest in October, stated that he spoke with a family member who stated that the Virtual Complainant swore an Affidavit to withdraw his complainant. The Court was not aware of this alleged affidavit nor Applicant’s Counsel yet the Applicant was. Further, the Court finds it odd that at this point a few weeks after a Virtual Complainant made and signed two statements to officers he has now allegedly withdrawn his statements by way of an Affidavit.
- d. The Court in reviewing the convictions, note the alleged offences, of the Applicant along with the above demonstrates that he is not a fit and proper

person for the grant of bail. As the sentences for Possession of an Unlicensed Firearm are not spent and ought to be considered.

- e. The Court is not satisfied that it can impose conditions of bail which will prevent further interference the Crown's witnesses in this case nor obstruct the course of Justice, as it is clear to the Court that either the Applicant or his agents have sought to obstruct the course of justice at the very worse or at best there was some perjury by the Virtual Complainant.

[29.] The application to admit bail is denied. The Defendant is to remain remanded to the Bahamas Department of Correctional Services. Parties aggrieved by this decision may appeal within the statutory time frame.

Dated the 14th January, A. D. 2025

A handwritten signature in black ink, appearing to read 'A. Forbes', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke at the end.

Andrew Forbes
Justice of the Supreme Court