IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2016/CRI/bail/00055

BETWEEN

BILLY MARTIN

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Hon. Justice Neil Brathwaite**
Appearances:	**Mr. Glendon Rolle for the Applicant** **Mr. Ashton Williams for the Respondent**
Hearing Date:	**15th January A.D. 2025**
Ruling Date:	**4th February A.D. 2025**

RULING ON BAIL

[1.] The Applicant is a thirty-one year old Bahamian male who was arraigned in the Magistrate's Court on 31st January 2023 on a charge of Murder. In his affidavit in support of the bail application, the Applicant in one paragraph states that he was never on bail or arrested with any other charges before the courts of the Bahamas, while in another paragraph he states that he has served a sentence of imprisonment for the offence of Attempted Murder. He claims to have no other pending matters, and states that he will be disadvantaged in his ability to prepare his defence, and his family will suffer hardship, if he is denied bail.

[2.] In seeking to oppose the application, the Respondent proffered the affidavit of Vashti Bridgewater, Counsel in the Office of the Director of Public Prosecutions, from which it can be gleaned that the victim in this matter was driving along Infant View Road when

he was cut off by another vehicle, from a which a single gunman emerged to fire a barrage of shots at the victim, who received fatal injuries. The Applicant has been identified from a photo array as the person who fired those shots. The affidavit in response also refers to a report from Metro Security Solutions, the operators of the Electronic Monitoring Device System, indicating that a total of fifty-three persons were murdered while being monitored between November 2021 and present day, and a report from the Central Detective Unit of the Royal Bahamas Police Force indicating that a total of twenty-two persons were murdered between January 2022 and December 2002 who were being monitored.

[3.] Counsel on behalf of the Applicant relies on the constitutional presumption of innocence and the right to liberty, and notes that the Prosecution bears the burden of satisfying the court that there are substantial grounds for believing that the Applicant would fail to surrender for trial, reoffend, or interfere with witnesses, or that the Applicant should be kept in custody for his own safety. Counsel submits that the evidence is not cogent, as the Crown's case relies on one anonymous witness, with no independent corroboration of that evidence. It was further submitted that there is no basis to conclude that the Applicant will interfere with witness or abscond, and that the Applicant is not a flight risk, as he has a stable family life and strong ties to this community. Finally, counsel noted that the trial of the Applicant is set to commence in July 2026, by which time the Applicant will have been in custody for more than three years, which would be unreasonable. The court was therefore urged to conclude that conditions could be put in place to ensure the attendance of the Applicant at trial, and to grant bail.

[4.] In response, the Respondent submits that the evidence is cogent, as the Applicant has been identified by an anonymous witness to whom the Applicant was known. It is submitted that the Applicant should be kept in custody for the safety of the witness, and also to protect public order and prevent reoffending, having regard to the fact that the Applicant has previously served a sentence of imprisonment for Attempted Murder.

LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

"5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have

committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

"...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

[6.] At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

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

[8.] Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(3) Any person who is arrested or detained in such a case as is 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 a 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, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

"4. (2) Notwithstanding any other provision of this 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;
(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 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 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 considerations."
9. The factors referred to in Part A are:
"PART A
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.";

[10.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[11.] In considering those factors, I note that the Applicant is charged with a very serious offence involving the use of a firearm, and resulting in the death of another in what can

only be described as a deliberate and targeted attack. I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[12.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in 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 in the scale against the grant of bail".***

[13.] I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"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 the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

[14.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with murder which, in considering the possible penalty which could follow a conviction, raises the issue of the likelihood of not appearing for trial, particularly as any sentence imposed following a conviction could be on the higher end due to the previous conviction of the Applicant.

[15.] That likelihood of flight must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"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."

[16.] In considering the cogency of the evidence, I note the following statement from the Court of Appeal in ***Stephon Davis v DPP SCCrApp. No. 20 of 2023***:

"In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

[17.] In reviewing what has been placed before me, I note that the affidavit in response states that the Applicant has been identified by an eyewitness. That evidence in my view rises to the level of a strong prima facie case as is required in Stephon Davis decision above. While counsel has submitted that the evidence is weak, as there is no corroboration, it is my view that this submission concerns the strength of the evidence, which is a matter to be determined at trial.

[18.] While bearing in mind the presumption of innocence, I am concerned that the Applicant in this matter faces a weighty penalty if convicted such as to raise the inference of a risk of flight. I am likewise concerned that the Applicant has been identified as being involved in what appears to be a planned and concerted attack. Furthermore, the Applicant in this case has served a lengthy prison sentence for Attempted Murder, and is now charged on cogent evidence for an even more serious offence. In all the circumstances of this case, and bearing in mind the atmosphere of retaliatory attacks which presently exists in this country, as well as the attacks on persons who are on bail, I am of the view that the Applicant poses a real risk to public safety and order, and that there must be some concern for the safety of the Applicant.

[19.] The tensions inherent in a bail application between the right to liberty and the need to protect the public requires the court to conduct a balancing exercise. In the instant case,

while I am satisfied that there is a risk of flight, and that there is a need to protect the public and the Applicant, having regard to the nature and circumstances of the offence, and the antecedents of the Applicant, I am concerned in this case that the Applicant has been in custody for approximately twenty-four months, and is not likely to be tried until June 2026.

[20.] At paragraph 17 of the Duran Neely decision cited above, the learned Evans J said the following:

"It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown."

[21.] In my view, the relevant time periods in the instant case require the court to consider the protection of the rights of the accused as referenced in Duran Neely, and to weigh that factor in conducting the requisite balancing exercise. The tensions inherent in a bail application between the right to liberty and the need to protect the public requires the court to conduct a balancing exercise. In the instant case, while I am satisfied that there is a risk of flight, and that there is a need to protect the public and prevent re-offending, having regard to the nature and circumstances of the offence, and the antecedents of the Applicant, I am concerned in this case that the Applicant has been in custody for approximately twenty-four months, is unlikely to be tried until July 2026 which would amount to a total of forty months detention prior to trial, which is just over the three year period which is statutorily defined pursuant to section 4 (2A) of the Bail Act which reads as follows:

"(2A) For the purpose of subsection (2)(a) and (b) —
(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;"

[22.] I note that the section specifically does not limit the extent of a reasonable time, so that it is entirely possible for a period of more than three years to be considered reasonable, depending on the particular circumstances of the case. I also note that the provisions of the Bail Act reads "has not been tried within a reasonable time", and not "is unlikely to be tried within a reasonable time". This is the same form of words used in Article 19 (3) of The Constitution and, in my view, do not require the court to look prospectively at whether a person will be detained for an unreasonable period of time, but whether an unreasonable period of time has already passed.

[23.] This is not to grant license to the authorities to detain without trial for the three year period. However, given my view that this Applicant, if released on bail, will re-offend, and that such re-offending, if it occurs, could have even more dire consequences for victims as well as the public, I am constrained to conclude that this not an appropriate case in which to conclude at this time that the right to bail outweighs the need to protect the public.

CONCLUSION

[24.] In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view those conditions would suffice to ensure the attendance of the Applicant at his trial, but they would not suffice to preserve public order, or to prevent reoffending and ensure the safety of the Applicant.

[25.] In the circumstances and having regard to the foregoing reasons, I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 4th day of February A.D., 2025

Neil Brathwaite
Justice